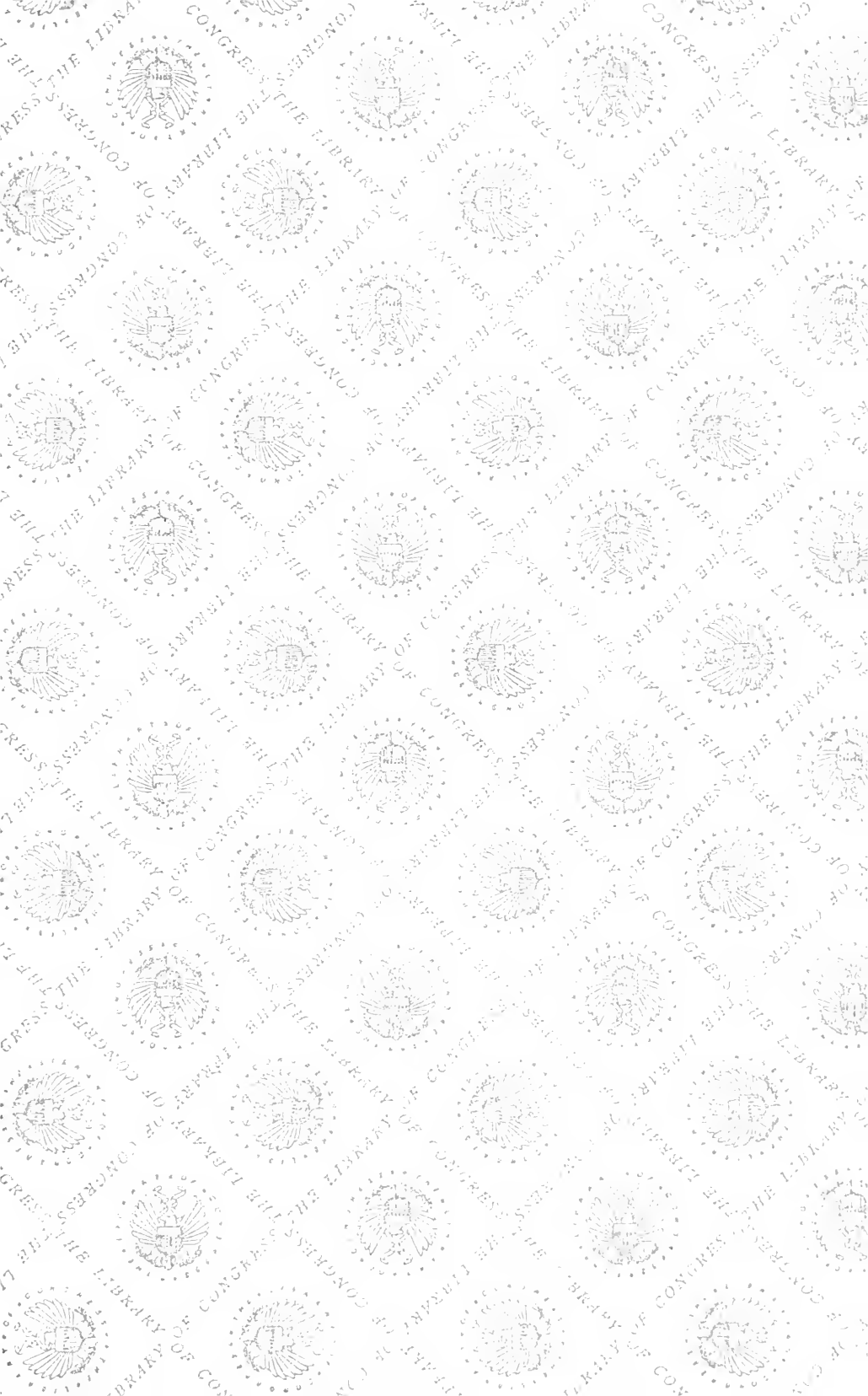


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MEMORIAL OF THE DELAWARE INDIANS.

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**MEMORIAL OF THE DELAWARE INDIANS RESIDING IN THE  
CHEROKEE NATION PRAYING RELIEF RELATIVE TO THEIR  
RIGHTS IN AND OWNERSHIP OF CERTAIN LANDS WITHIN  
THE BOUNDARIES OF SAID NATION.**

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NOVEMBER 23, 1903.—Referred to the Committee on Indian Affairs and ordered to be printed.

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**MEMORIAL OF THE DELAWARE INDIANS.**

MEMORIAL OF THE DELAWARE TRIBE OF INDIANS RESIDING IN THE CHEROKEE NATION RELATIVE TO THEIR RIGHTS IN AND OWNERSHIP OF 157,600 ACRES OF LAND SITUATED WITHIN THE BOUNDARIES OF SAID NATION, PURCHASED BY SAID DELAWARE TRIBE PURSUANT TO AGREEMENT MADE WITH THE CHEROKEE NATION, DATED APRIL 8, 1867, IN ACCORDANCE WITH THE CHEROKEE TREATY OF JULY 19, 1866, AND THE DELAWARE TREATY OF JULY 4, 1866; RELATIVE ALSO TO CERTAIN LAWS OF CONGRESS IN REFERENCE TO SAID LANDS, THE FAILURE OF THE GOVERNMENT UNDER SAID TREATIES AND LAWS TO PROTECT THE DELAWARES IN THEIR RIGHTS WITH RESPECT THERETO OR TO ENFORCE SUCH LAWS AS PASSED, AND ESPECIALLY RELATIVE TO THE OPPRESSIVE AND UNJUST ACTION RECENTLY TAKEN BY CERTAIN DEPARTMENTS OF THE GOVERNMENT TO ABSOLUTELY IMPAIR OR DEFEAT SUCH RIGHTS AND THE TITLE OF THE DELAWARES TO SUCH LANDS.

Your memorialists represent:

1. The said Delawares are a band of the Cherokee Nation, and became and have continued to be such band by reason of the matters hereinafter stated. They are descendants of the Delaware tribe of Indians, who removed from the States of Indiana and Ohio in accordance with the provisions of treaties made with the United States October 3, 1818 (7 Stat. L., 188), and August 3, 1829 (7 Stat. L., 326).

2. Upon such removal the Delawares settled upon a reservation provided for them in the State of Kansas, as described and set apart for their use in said treaty of August 3, 1829.

3. Subsequently the Delawares removed to the Indian Territory and became residents, members, and citizens of the Cherokee Nation by virtue of a certain agreement made between them, as a tribe, and the

Cherokee Nation, dated April 8, 1867, which was approved by the United States and which was made pursuant to two treaties previously entered into, which are recited in said agreement, one made between the Cherokee Nation and the United States, dated July 19, 1866 (14 Stat. L., 799), and one between the Delaware tribe and the United States, dated July 4, 1866 (14 Stat. L., 793). A copy of the said Delaware-Cherokee agreement is hereto annexed and marked "Exhibit 1."

4. Ever since the making of said agreement the Delaware tribe has been and still is a band of the Cherokee Nation, has preserved its tribal organization, maintained its tribal laws, customs, and usages not inconsistent with the constitution and laws of the Cherokee Nation, and ever since the making of said agreement the individual members of the band or tribe of Delawares have been citizens of said Cherokee Nation, residing therein.

5. In and by said Delaware-Cherokee agreement (Exhibit 1) two things were specifically provided for:

(a) In the latter portion of said agreement the Delawares, by the payment to the Cherokee Nation of a specific sum of money from their tribal fund, amounting to \$121,824.28, secured for themselves and their descendants all the rights of Cherokee citizens. These rights included not only political rights, but also the right for each Delaware or his descendant to share equally with the members of the Cherokee Nation in all the common domain of that nation and in all its communal funds.

This was a right which the Shawnees obtained by making a similar payment, but the Shawnees did not secure anything further. Quite the contrary was the case of the Delawares.

(b) By the first portion of said agreement (Exhibit 1) it was provided that the Cherokee Nation should, in addition to selling the Delawares rights of citizenship, sell to them an aggregate body of land whose extent was to be measured by the number of Delawares (985) who appeared upon a certain register or roll, multiplied by 160 acres for each of said Delawares. These lands could be selected in any portion of the Cherokee domain east of the 96° of west longitude, and it was provided that the amount should be "in the aggregate equal to 160 acres for each individual of the Delaware tribe who was enrolled upon a certain register made February 18, 1867."

As there were 985 Delawares, this aggregate body of land amounted to 157,600 acres.

The agreement further provided that—

In case the Cherokee lands shall hereafter be allotted among the members of said nation, it is agreed that the aggregate amount of land herein provided for the Delawares, to include their improvements, according to the legal subdivisions when surveys are made (that is to say, 160 acres for each individual) shall be guaranteed to each Delaware incorporated by these articles into the Cherokee Nation.

It was further provided that the continued ownership and occupancy of the land should not be interfered with.

The exact phraseology of the whole agreement can be seen by an examination of Exhibit 1.

6. The Delawares paid from their tribal funds not only said sum of \$121,824.28, but also paid an additional sum of \$157,600, at the rate of \$1 an acre for said additional 157,600 acres of land.

In 1867, \$1 an acre was a very high price for the lands which the Delawares secured. Other and better lands in the immediate vicinity

were sold at about this same time by the Government, or to the Government, at prices ranging from 9 to 70 cents an acre.

7. The Delawares removed from their Kansas Reservation pursuant to this agreement and selected, occupied and improved the 157,600 acres, and they and their descendants have occupied these lands up to the present time. They have expended about \$1,000,000 in improvements on said lands.

8. That the Delawares thought they were getting a clear and absolute title to these lands is evident from the contemporaneous circumstances. Although nearly 200 of the 985 Delawares died before actual removal to the Indian Territory, yet, nevertheless, the aggregate amount of land to which they would have been entitled, if living, was paid for by the funds of the Delaware tribe into the Cherokee Nation. The tribe, as a tribe, supposed that they, as a tribe, were buying this aggregate amount of land for themselves and their descendants. The tribe, as a tribe, believed that it succeeded to the title which the Cherokee Nation had in these lands, the highest kind of Indian title, namely, a title by occupancy.

9. Not only was this the fact, but also as much was paid into the Cherokee Nation by reason of this list of 985 Delawares, whether any individual on that list was an infant in arms or an old man, the Delawares naturally considering that the 985 members upon said list were merely used as a measure of ascertaining the aggregate amount of land at 160 acres each.

10. These remarks are interpolated at this point for the reason that of late years the Cherokee Nation has taken the position that the only thing secured by this payment of \$157,600 was a life interest in each of the 985 registered Delawares in 160 acres of land, and that as soon as any registered Delaware died his selection of 160 acres fell into the common domain of the Cherokee Nation and became subject to allotment among all Cherokee citizens. The absurdity of this position is evident when the fact of the death of registered Delawares is considered, as mentioned above, and the further fact that an equal amount was paid whether a Delaware was old or young.

11. The Delawares occupied and improved these lands without molestation by the Cherokee from the time they entered into possession of them in 1867 and 1868, up to about the year 1898, and during all this time the Cherokee considered and believed that the Delawares had purchased this land and acquired an indefeasible title.

12. When the right of the Delawares to share in the distribution of the tribal or communal funds of the Cherokee Nation was in question, which resulted from the leasing or selling of certain lands in the common domain in opposition to the rights of the Delawares to share in such funds, in a certain action brought in the Court of Claims, entitled *Journeyake v. The Cherokee Nation*, and in the brief filed on behalf of the Cherokee Nation, the position was taken unqualifiedly that the Delawares obtained these lands absolutely. (See 28 C. Cl. R., 281.)

13. Furthermore, in a communication made to Hon. Henry L. Dawes, chairman of the Senate Committee on Indian Affairs, dated June 19, 1890 (in reference to Senate bills 2322, 4405, Fifty-first Congress, first session), the Cherokee Nation, by its delegates, expressly stated as follows:

As has been seen, the Delawares purchased 157,600 acres of Cherokee lands lying east of the ninety-sixth degree. That was an absolute and unconditional purchase, and in which lands the Cherokee Nation has no title or interest.

14. After a decision of said case of *Journeyeake v. The United States*, which went on appeal to the Supreme Court of the United States (155 U. S., 196), a different position was taken, or attempted to be taken, by the Cherokee Nation in regard to these lands, namely, that the original registered Delawares merely had life interests in 160 acres each, and that the Delawares as a tribe did not get an absolute title to the 157,600 acres.

15. In view of this new contention and the confusion which was caused by it when the question of allotment of Cherokee lands was under consideration, the Congress of the United States, in passing the so-called Curtis Act, approved June 28, 1898, expressly provided in section 25 thereof as follows:

SEC. 25. That before any allotment shall be made of lands in the Cherokee Nation, there shall be segregated therefrom by the commission heretofore mentioned, in separate allotments or otherwise, the one hundred and fifty-seven thousand six hundred acres purchased by the Delaware tribe of Indians from the Cherokee Nation under agreement of April eighth, eighteen hundred and sixty-seven, subject to the judicial determination of the rights of said descendants and the Cherokee Nation under said agreement. That the Delaware Indians residing in the Cherokee Nation are hereby authorized and empowered to bring suit in the Court of Claims of the United States, within sixty days after the passage of this act, against the Cherokee Nation, for the purpose of determining the rights of said Delaware Indians in and to the lands and funds of said nation under their contract and agreement with the Cherokee Nation dated April eighth, eighteen hundred and sixty-seven; or the Cherokee Nation may bring a like suit against said Delaware Indians; and jurisdiction is conferred on said court to adjudge and fully determine the same, with right of appeal to either party to the Supreme Court of the United States.

16. The Delawares brought suit, as authorized in the said Curtis Act, and the various proceedings had thereunder or in other litigations, and the history of the relations of the Government with the Delawares in regard to said land will now be taken up more in detail.

17. Prior to the passage of the Curtis Act and in the summer of 1897, inasmuch as the question in regard to the ownership of this land was becoming acute, Mr. Richard C. Adams, a Delaware by descent, at the request of a very large number of Delawares, came to the city of Washington in order to take such steps as might be possible to establish and secure the rights of his tribe in this disputed land.

18. Early in May, 1897, there was submitted to the Department of the Interior a memorial entitled "What the Delawares Want," to which was annexed a memorandum of their title to this disputed land. This very fully sets forth the facts upon which the Delawares rely. Copy of this memorial is hereto annexed and marked "Exhibit 2."

19. Thereupon, on May 4, 1897, the Commissioner of Indian Affairs wrote the Secretary of the Interior, referring to him this memorial, stating that the request of the Delawares contained in the memorial was reasonable and that the position taken by them for the five reasons assigned in the memorial seemed to be well founded. A copy of this communication is hereto annexed and marked "Exhibit 3." Thereupon, on May 7, 1897, the Secretary of the Interior sent to the Dawes Commission the said memorial and the said report of May 4, 1897, of the Indian Office, with the statement that the Secretary concurred with the Indian Office. A copy of this communication is hereto annexed and marked "Exhibit 4." On the next day, May 8, 1897, the Secretary of the Interior wrote, acknowledged the receipt of said memorial, and sent a copy of said communications of May 4 and May 7, 1897, above noted. A copy of said letter of May 8, 1897, is annexed hereto and marked "Exhibit 5."

20. About this time the Dawes Commission was considering the question of making an agreement with the Cherokees with respect to the allotment of their lands, and the question of the separate right of the Delawares in the 157,600 acres became of great importance. In view of this, on June 23, 1897, a letter was written on behalf of the Delawares to the Secretary of the Interior, in which it was stated that the Delawares desired to treat separately with the Dawes Commission concerning said lands, stating that the Secretary had favorably considered the position of the Delawares in regard to the ownership of said lands, by virtue of the said letters or reports above mentioned, dated May 4 and May 7, 1897. It was also stated that the Delawares desired the Commission to settle their rights in the lands and funds of the Cherokee Nation. This communication discusses quite fully the rights of the Delawares as they claim them, and a copy thereof is annexed hereto and marked "Exhibit 6."

Inclosed with this letter of June 3, 1897, were three affidavits, one made by Mr. S. H. Bengé on June 10, 1897, a former Cherokee senator; one by Rev. William Adams, a Delaware, on June 12, 1897, and one by John G. Pratt, who was Indian agent at the time of the making of the Delaware-Cherokee agreement of 1867 on June 14, 1897. In each of these affidavits it was stated that the Cherokees sold and the Delawares bought 157,600 acres of land. Copies of these affidavits are annexed hereto and marked, respectively, Exhibits "7," "8," and "9."

21. Up to this time the Department of the Interior had taken a favorable view of the rights of the Delawares as they contend them to be, and it was not anticipated that any considerable controversy would subsequently arise with reference to such rights. Beginning, however, with about the middle of July, 1897, the views of the Interior Department greatly changed, and by reason of this all of the litigation which is hereafter mentioned became necessary.

22. On July 15, 1897, the Dawes Commission reported to the Secretary of the Interior in writing, acknowledging the receipt of the Delaware memorial and stating that the question of the 157,600 acres of land must first be settled, but that the Commission had no authority to treat with the Delawares alone, as they were not one of the Five Civilized Tribes referred to in the statute creating the Commission, and suggesting that there first be an allotment of the 157,600 acres and thereafter of the remaining lands, and suggesting also that some official opinion be given with respect to said matter. A copy of this report is hereto annexed and marked "Exhibit 10."

23. On August 19, 1897, the Indian Office reported to the Secretary of the Interior in regard to the letter of June 23, 1897, and the report of the Dawes Commission of July 15, 1897, above referred to. The Indian Office took the ground that the Delawares could not be treated with separately, and that only each registered Delaware had 160 acres, objection being taken also to the fact that Mr. Adams had no contract to represent his tribe.

24. On October 5, 1897, doubtless pursuant to the suggestion of the Dawes Commission, an official opinion was rendered by the Attorney-General (see 25 L. D., 297). The Attorney-General considers the treaties of 1865 and the agreement of 1867, which have been referred to, and the *Journeycake* case (28 C. Cls. R., 281; 155 U. S., 196), and holds in effect that, under the Delaware-Cherokee agreement of April

8. 1867, the Delawares get no greater rights than the Cherokees, with the single exception that if upon allotment each Cherokee would get less than 160 acres then the living registered Delawares would be entitled in any event to 160 acres each. It was by reason of this opinion that the Cherokees became emboldened to change the position which they had maintained for many years and to claim that the Delawares practically got nothing for the expenditure of \$157,600 of their tribal funds.

25. On December 27, 1897, a letter was written to the Secretary of the Interior requesting him to reconsider the opinion rendered October 5, 1897, but no attention was paid to the communication during the years 1897 and 1898, and not until February 24, 1899, when the Hon. Ethan Allen Hitchcock, Secretary of the Interior, wrote specifically in reply to said letter of December 27, 1897, stating that inasmuch as a suit was pending between the Delawares and the Cherokees by virtue of the provisions of section 25 of said Curtis Act, it was unnecessary to take steps to reconsider said opinion.

26. Inasmuch as the efforts for a reconsideration of this opinion were ignored, and as it appeared that the rights of the Delawares were in great jeopardy, steps were taken to bring this controversy concerning this land to the attention of Congress, and in the year 1898, after consideration of said matter, the said Curtis Act was passed June 28, 1898, which in section 25, as above set forth, provided for a suit in the Court of Claims to determine this disputed question as well as all of the rights of the Delawares in the lands and funds of the Cherokee Nation. (30 Stat. L., 495-504.)

27. Thus far Mr. Adams had proceeded to secure the rights of the Delawares without any formal contract with his tribe, although authorized by various individuals of said tribe. On August 4, 1898, a formal contract was entered into between Mr. Adams and Mr. John Bullette on the one part and the business committee of the Delaware tribe on the other part, a copy of which contract is hereto annexed and marked "Exhibit 11." And on July 29, 1898, at a meeting of the Delaware tribe duly called, the act of the Delaware business committee in making said contract was ratified and confirmed. A copy of said act of ratification is hereto annexed and marked "Exhibit 12."

28. Thereafter and on or about August 4, 1898, pursuant to the powers specified in section 25 of the Curtis Act, the Delawares began suit in the Court of Claims of the United States against the Cherokee Nation by the filing of a petition wherein the Delawares, after setting forth their rights as aforesaid, prayed the court to determine all of their rights and to adjudge that they were the owners of the 157,600 acres of land and were in addition entitled to share equally with all other Cherokee citizens in all of the remaining lands of the Cherokee Nation and in all of its national funds. In said petition it was shown that the Cherokee had unlawfully admitted vast numbers of persons as citizens of said nation since the date of the Delaware-Cherokee agreement—persons who had contributed nothing to the funds of the Cherokee—thus cutting down the pro rata share of each Delaware in the lands and funds of said nation; and the Delawares prayed the court that it should also determine what persons as citizens of said nation should be entitled to share in its lands and funds.

29. Not long after the commencement of the said suit, and on August 23, 1898, Logan, Demond & Harby, attorneys in said suit for the Dela-

wares, wrote to the Secretary of the Interior requesting that the said 157,600 acres of land be surveyed and segregated pursuant to section 25 of the Curtis Act, and that this be done at least prior to trial and judgment in said suit. This communication was not noticed until November 4, 1899, in a certain communication of the Secretary of the Interior to the Dawes Commission, which will hereafter be mentioned.

30. On October 11, 1898, at a meeting of the Delaware tribe duly called, resolutions were passed which certified to the selections made by the Delawares in the Cherokee country, embracing said 157,600 acres, and a list of which was annexed to said resolution. These selections are substantially the same as those which have been filed with the Court of Claims and the Dawes Commission, which will be hereinafter referred to.

Said resolution requested the Government to make selections of these lands and ratify all acts of the said Richard C. Adams and John Bullette, done on behalf of said tribe with respect to said lands, and also again ratified said agreement of August 4, 1898, as well as the compensation thereafter provided to be given. A copy of said resolution is hereto annexed and marked "Exhibit 13."

31. After the institution of said suit in August, 1898, and during the remainder of that year and the succeeding years up to October, 1902, when the case was argued, the Delawares, through and by the aid of their said attorneys, secured a very large amount of testimony in various parts of this country at very large expense.

32. On November 4, 1899, the Secretary of the Interior wrote to the said Dawes Commission with reference to the said letter of Logan, Demond & Harby, dated August 23, 1897, requesting an opinion from the Dawes Commission as to what should be done about the segregation of 157,600 acres of land. A copy of this letter is hereto annexed and marked "Exhibit 14."

33. On November 20, 1899, the Indian Office wrote the Secretary of the Interior in relation to his request of November 4, 1899, and inclosed a report of the Dawes Commission dated November 30, 1899. The Indian Office, basing its statement upon said report, stated that the Cherokee rolls of citizenship had not yet been completed; that the lands must be segregated before allotment; that there could not be any allotment until the rolls were ready, which were expected to be finished sometime in 1900, and that thereafter segregation and allotment could take place. Copy of this communication of November 20, 1899, is hereto annexed and marked "Exhibit 15." The said report of the Dawes Commission of November 13, 1899, was approved by the Secretary of the Interior in a letter of November 22, 1899, a copy of which is annexed hereto and marked "Exhibit 16."

34. Subsequent to the beginning of said suit and up to February, 1901, from time to time the said attorneys had been carefully preparing maps and plats showing the specific lands selected, occupied, and improved by the Delawares under their agreement of April 8, 1867, but in view of the foregoing report that no allotment or segregation could be made until the Cherokee rolls had been prepared, the maps or plats of such selected lands had not been actually filed with the Dawes Commission, although a copy had been filed with the Court of Claims.

35. On February 27, 1901, the attorneys wrote the Secretary of the Interior, inclosing three maps showing the specific location of said

157,600 acres of land, requesting that it be segregated and that one map be sent to the Dawes Commission, and stating that there were copies on file in said suit in the Court of Claims. A copy of said letter is hereto annexed and marked "Exhibit 17."

36. Up to February, 1901, and during the period beginning November, 1898, not only did the said Delawares, through their attorney, at large expense take much testimony in said suit, but also they, through him, investigated the status of the Delawares by examination of the records in the Office of the Commissioner of Indian Affairs from the beginning of the Government, and made copies of papers in relation thereto at the expense of many thousands of dollars, said copies amounting to more than 16,000 pages of typewritten matter.

In addition, said Delawares, through their said attorney, took proceedings before the Department of the Interior from time to time to oppose the efforts of certain Cherokees and others to obtain oil leases upon various lands claimed or occupied by the Delawares, all of which took a very large amount of time and was undertaken at great expense.

37. By letter of the Secretary of the Interior, dated March 2, 1901, he acknowledged receipt of the three maps sent February 27, 1901, and reported that one of them had been sent to the Dawes Commission. Therefore, as early as March, 1901, the Dawes Commission were notified as to the lands claimed by the Delawares which should be segregated pursuant to section 25 of said Curtis Act. Said Dawes Commission, however, did not attempt to make any segregation of said lands in obedience to the terms of said Curtis Act, and not until long after the passage of the act called the Cherokee allotment act, approved July 1, 1902, as will hereinafter appear.

38. On March 23, 1901, the Dawes Commission, by its chairman, Tams Bixby, reported to the Secretary of the Interior with relation to the said maps so sent as aforesaid, acknowledging receipt of said maps and stating that the rolls of the Cherokees had not yet been prepared; that there was no need of segregation before allotment, and that there need be no segregation before the decision of the Court of Claims in the said suit, the report stating that the segregation would merely be the withholding from allotment of 157,600 acres, and that if pending the suit the Cherokee lands should be allotted, the Commission could in such case reserve the Delaware lands.

The Commission also expressly stated that, in order to segregate, it needed a description of the legal subdivisions of the land claimed by the Delawares. A copy of this report is annexed hereto and marked "Exhibit 18."

39. On April 3, 1901, the Indian Office reported to the Secretary concerning the said report of the Dawes Commission (Exhibit 18), quoting the substance of the report and stating that the Department had nothing to do with the effect of the segregation; that there was no necessity for it at that time because the Delawares occupied the lands. The Indian Office, however, stated that there could be no allotment before segregation, referring to reports above quoted, dated November 13 and November 20, 1899. The report of March 23, 1901, was approved by the Secretary of the Interior on April 8, 1901, and on the same day the Secretary wrote a letter, quoting the substance of said report referring to the unfinished condition of the Cherokee rolls, stating that a segregation would not be an adjudication; that there could be no allotment to Cherokees until segregation, and that the Interior Department approved said reports dated March 23 and April 3, 1901.



Copies of said communications of April 3, April 8, and April 8, 1901, are hereto annexed and marked, respectively, Exhibits "19," "20," and "21."

40. Notwithstanding the request for segregation made by the Delawares, pursuant to the terms of the Curtis Act, in February, March, and April, 1901, the said Dawes Commission took no steps to make said segregation during the remainder of the year 1901 and during all of the year 1902 up to the time of the passage of the Cherokee allotment act of July 1, 1902, and not even then in pursuance of said section 23 of said Cherokee allotment act until long thereafter, in December of that year.

41. On July 1, 1902, there was passed by Congress, and approved by the President, an act popularly known as the "Cherokee allotment act."

This was intended to provide for allotment of lands in the Cherokee Nation and also to protect the rights of the Delawares to said 157,600 acres of land, it appearing that the suit in the Court of Claims had not been decided.

Section 23 of said act is as follows:

SEC. 23. All Delaware Indians who are members of the Cherokee Nation shall take lands and share in the funds of the tribe, as their rights may be determined by the judgment of the Court of Claims, or by the Supreme Court if appealed, in the suit instituted therein by the Delawares against the Cherokee Nation, and now pending; but if said suit be not determined before said Commission is ready to begin the allotment of lands of the tribe as herein provided the Commission shall cause to be segregated one hundred and fifty-seven thousand six hundred acres of land, including lands which have been selected and occupied by Delawares in conformity to the provisions of their agreement with the Cherokees dated April eighth, eighteen hundred and sixty-seven, such lands so to remain, subject to disposition according to such judgment as may be rendered in said cause; and said Commission shall thereupon proceed to the allotment of the remaining lands of the tribe as aforesaid. Said Commission shall, when final judgment is rendered, allot lands to such Delawares in conformity to the terms of the judgment and their individual rights thereunder. Nothing in this act shall in any manner impair the rights of either party to said contract as the same may be finally determined by the court, or shall interfere with the holdings of the Delawares under their contract with the Cherokees of April eighth, eighteen hundred and sixty-seven, until their rights under said contract are determined by the courts in their suit now pending against the Cherokees, and said suit shall be advanced on the dockets of said courts and determined at the earliest time practicable.

It appears from said section 23 that the Delawares were to take such rights in the lands as should be determined by the Court of Claims or by the Supreme Court on appeal in said suit. It is also apparent that the act provided that, as the suit was not determined, the Commission should before allotting any Cherokee lands cause to be segregated the 157,600 acres of land, to remain subject to the decision of the court. Notwithstanding the terms of this act, as will be seen hereafter, the Dawes Commission, claiming to have segregated these lands, nevertheless allowed Cherokee citizens to file applications for the segregated lands, and although as subsequently appears the Secretary of the Interior claims that he never had approved the segregation, yet, nevertheless, the Dawes Commission, prior to any such segregation, actually proceeded with the allotment of the Cherokee lands, received from ten to twelve thousand applications, and actually issued over five thousand certificates.

42. It was provided in section 69 of said Cherokee allotment act that any person aggrieved by the filing of applications for allotment of lands must institute contest within nine months after the date of

the application or be entirely barred. The said Dawes Commission, although claiming that said lands had been segregated, nevertheless when applications were filed by Cherokees for portions of said lands, notified from time to time Delawares in possession and occupancy of said lands to appear and contest pursuant to said section 69, all of which was a great hardship to numerous Delawares and entirely illegal and unauthorized. All of these facts will be set forth later and more fully.

43. After the passage of the said Cherokee allotment act, during July, August, September, October, and November, 1902, said Dawes Commission took no steps to segregate said lands, either by virtue of the provisions of the Curtis Act, section 25, or the Cherokee allotment act, section 23.

44. On September 25, 1902, the Dawes Commission issued a proclamation that the Cherokee land office would be opened at Vinita, Ind. T., on January 1, 1903, to allot lands to the Cherokees; said office to be open until April 30, 1903, and then to remove to Tablequah, where it was to be opened on May 4, 1903. A copy of this proclamation is hereto annexed and marked "Exhibit 22."

45. On September 23, 1902, a letter was written to the Dawes Commission requesting a copy of the Delaware roll, and on September 27, 1902, Tams Bixby, chairman of said Commission, replied, stating that the Delaware roll had not yet been completed. A copy of this last communication is hereto annexed and marked "Exhibit 23."

46. On October 2, 1902, Walter S. Logan, on behalf of the Delaware Indians, wrote to the Department of the Interior, inquiring with respect to the segregation of their lands and the question of allotments. His letter is quoted in a report of October 20, 1902, from the Dawes Commission, which is hereinafter referred to, and a copy of which is annexed as "Exhibit 27."

This communication of October 2, 1902, of Mr. Logan's was, on October 6, 1902, referred by the Interior Department to the Dawes Commission for report, and the report was made as hereinafter mentioned on October 20, 1902. On October 8, 1902, in reply to a letter dated September 30, 1902, Mr. Tams Bixby, chairman of the Dawes Commission, in response to a request for a list of the Delawares who are on approved rolls, stated that the list could not be given, saying:

It will be impossible for the Commission to furnish you with a list of those Delawares against whose enrollment no contest or objection has been entered.

Copy of this communication of October 8, 1902, is hereto annexed and marked "Exhibit 24."

47. On October 15, 1902, a meeting of the Delawares was duly called and held in the Indian Territory and resolutions were passed reciting the rights of the Delawares to the disputed lands, referring to the resolutions of July 28, 1898, authorizing Messrs. Adams and Bullette to represent them. Said resolutions of October 15, 1902, ratified the acts of Messrs. Adams and Bullette; ratified the list of Delaware segregated lands as filed in the Court of Claims, aggregating 157,600 acres, and referred to other claims which the Delawares had against the Government. A copy of this resolution is hereto annexed and marked "Exhibit 25."

48. At said time, October 15, 1902, said Delawares passed a further resolution protesting against allotments attempted to be made on their segregated lands, referring to the great amount of money expended

by them in improvements, requesting the Government to segregate the lands finally, and specifying that copies of the resolution should be sent to the Secretary of the Interior and the Dawes Commission. Copies of all these resolutions were so sent. A copy of this resolution of October 15, 1902, is hereto annexed and marked "Exhibit 26."

49. Prior to said October 15, 1902, the Delawares had duly filed in the Court of Claims, as evidence therein, full statements with plats or maps showing specifically the ownership, description, and boundaries of all said Delaware selected lands, aggregating 157,600 acres.

50. On October 20, 1902, the Dawes Commission made a report to the Secretary of the Interior with reference to said letter of Walter S. Logan, dated October 2, 1902, which was referred to the Commission by the Interior Department October 6, 1902.

In this report the Dawes Commission quote from Mr. Logan's letter which requested that there be no allotment of Cherokee lands until the determination of the suit in the Court of Claims and which set forth the reasons why such allotments should be prejudicial to the rights of the Delawares. The Dawes Commission quotes section 23 of the Cherokee allotment act; reports that allotments would not be delayed until decision in said suit, as this might mean a delay until the Supreme Court had passed upon the question; takes the ground that the Delawares are not entitled to lands outside of the 157,600 acres, and finally reports that although the Commission thinks that it has no authority to allot lands to Delawares not embraced in the "segregation provided for in the statute" (Cherokee allotment act), that nevertheless the Commission believes "that upon the application of any Delaware citizen there should be reserved from allotment until the final determination of the suit of the Delawares against the Cherokees only such lands not embraced in said segregation and not exceeding land equaling in value 110 acres of average allottable lands of the Cherokee Nation as contains permanent and valuable improvements owned by such Delaware citizen."

A copy of this report is hereto annexed and marked "Exhibit 27."

51. In view of this ruling by the Dawes Commission, that Delawares could file applications for lands outside of said segregation if they were occupied by such Delawares, and relying thereon the amended schedule of segregated lands filed in the Court of Claims and with the Dawes Commission in December, 1902, as hereinafter mentioned, in some instances included lands occupied by Delawares outside of said segregated lands, and this accounts for the discrepancy in some of the descriptions, which was corrected by amended schedule filed in January, 1903, as will subsequently appear.

52. In October, 1902, the said case of the Delawares against the Cherokees in the Court of Claims was argued and submitted.

53. Said report of the Dawes Commission of October 20, 1902 (Exhibit 27), was not passed upon by the Interior Department until November 22, 1902, when, in a report from the Indian Office to the Secretary, dated November 22, 1902, the Indian Office quotes from Mr. Logan's letter of October 2 and from said report of the Dawes Commission of October 20 and recommends the approval of said report of October 20, 1902. Thereafter, on November 29, 1902, the Secretary wrote to the said Walter S. Logan in answer to his letter of October 2, 1902, inclosing a copy of said report of October 20 of the Dawes Commission and said report of November 22 of the Indian Office, the

Secretary stating that he concurred in said reports. A copy of said Indian Office report of November 22, 1902, and of said Secretary's letter of November 29, 1902, are hereto annexed and marked, respectively, Exhibits "28" and "29."

54. At the argument of the said case of the Delawares against the Cherokees in said Court of Claims, in October, 1902, there was printed in the record a description of the Delaware segregated lands, embracing 157,600 acres, which in the record were numbered pages 738 to 777, inclusive. At the time of said argument and thereafter it appeared that there were some inaccuracies in said schedule and some omissions, and it was agreed between counsel for the Delawares and the Cherokees that the amended schedule of said lands should be prepared and filed in the Court of Claims in lieu of said schedule previously prepared and numbered pages 738 to 777, inclusive. The fact that said stipulation had been made and that such corrections were to be had was made known to the Dawes Commission on December 8, 1902, and said Tams Bixby telegraphed as follows:

Have description of land in record of Delaware case, pages 738 to 777, been corrected by stipulation, as suggested by you? If so, forward certified copy at once.  
Answer.

TAMS BIXBY, *Chairman.*

On December 10, 1902, the said Richard C. Adams telegraphed to said Tams Bixby as chairman at Muscogee, Ind. T., as follows:

Logan has signed stipulation and description. Mailing them to Hutchings to-day. He will hand you copy.

The said Logan and Hutchings were respectively counsel and attorneys for the said parties in said suit. Said amended description and said stipulation were received and filed by said Commission on or about December 16, 1902, and on December 17, 1902, said Dawes Commission duly adopted the following resolution:

*Be it resolved by the Commission,* That the acting chairman cause to be set aside and segregated 157,600 acres of land in the Cherokee Nation in accordance with the provisions of section 23 of the act of Congress approved July 1, 1902 (Public—No. 241), subject to disposition according to such judgment as may be rendered in the case of the Delaware Indians *v.* Cherokee Nation, now pending in the United States Court of Claims, and as shown by description of said lands in the stipulation of counsel for parties in said case, dated at Washington, D. C., December 10, 1902.

55. In obedience to said resolution the acting chairman, Tams Bixby, did cause said lands to be segregated as aforesaid, so far as the said Dawes Commission had power so to do.

56. On January 1, 1903, pursuant to the proclamation (Exhibit 22), a Cherokee land office was opened at Vinita, Ind. T., with a full force of clerks and officers, for the purpose of making allotments of Cherokee lands. What proceedings were had at said office until said office was closed will be more fully shown when the evidence of Tams Bixby, taken in a certain suit brought on or about June 2, 1903, which will be hereinafter mentioned, is discussed.

57. On January 5, 1903, the said Tams Bixby wrote two letters, one to the said Walter S. Logan and one to the said Walter S. Logan and William T. Hutchings, counsel for the parties in said suit, in relation to the stipulation filed with said Dawes Commission December 6, 1902, which letter stated that the Commission had segregated 157,541.74 acres under the Cherokee allotment act, section 23, but that there were discrepancies in said description; that 60 acres had been deducted,

and requesting the filing of an amended description showing said segregated lands. In said letters the particular discrepancies were specifically pointed out. Copies of said letters are hereto annexed and respectively marked Exhibits "30" and "31."

On or about January 15 or 16, 1903, there was forwarded to the said Dawes Commission a second amended schedule and description of said Delaware lands, pointing out the reasons for changes. A copy of this communication to the said Bixby, inclosing said second amended schedule, is hereto annexed and marked "Exhibit 32," which second amended schedule was received by said Commission on or about January 23, 1903.

On or about February 2, 1903, the Court of Claims, in said suit of the Delawares against the Cherokees, rendered its opinion and judgment, dismissing the petition of the Delawares, although said court, in its opinion, found that the Delawares had certain rights, and although certain of the rights of the Delawares were not disputed in said suit, yet, nevertheless, said petition was wholly dismissed, and appeal was taken to the Supreme Court of the United States on or about March 18, 1903, which appeal is still pending and undetermined.

59. On March 17, 1903, the said Dawes Commission reported to the Secretary of the Interior in regard to its work in allotting Cherokee lands during the month of February, 1903. This report shows the number of applicants for lands and the number of contests and complaints, and states that the approval of 38 applications was withheld because the land applied for "was embraced in the 157,600 acres of land which the Commission caused to be segregated for the Delaware Indians pending the determination of the suit instituted in the Court of Claims and in the Supreme Court, if appealed, by the Delawares against the Cherokee Nation." Copy of this report is hereto annexed and marked "Exhibit 33." This report was forwarded by the Indian Office to the Secretary on March 27, 1903 (see Exhibit 34), and was approved by the Secretary on March 30, 1903 (see approval, Exhibit 35).

60. On April 16, 1903, the Dawes Commission reported to the Secretary of the Interior concerning its work for the month of March in allotting Cherokee lands, and this report also showed that 57 applications were held up because they embraced a portion of said segregated lands. This report was forwarded by the Indian Office to the Secretary on April 30, 1903. Copies of said report and of said communication forwarding the same are hereto annexed and marked Exhibits "36" and "37."

61. On April 20, 1903, the Dawes Commission made a report to the Secretary of the Interior of its action in segregating 157,600 acres of land pursuant to the Cherokee allotment act. After referring to its report of October 20, 1902 (Exhibit 27), Mr. Logan's letter of October 2, 1902, the Department's letter of November 29, 1902 (Exhibit 29), the amended schedule of segregated lands filed December 16, 1902, the stipulation of December 10, 1902, the resolution of the Commission of December 17, 1902, the letter of said Commission of January 5, 1903 (Exhibits 30 and 31), the second amended schedule received January 23, 1903, and certain other correspondence, the Commission reports that certain of the segregated lands are embraced within town sites, and that certain Delaware citizens claim that their lands have not been segregated or included in the schedule. The Commission also reports

that it thinks the schedule as a whole is not accurate, and finally states as follows:

The Commission believes that some steps should be taken to guard against the possibility of the Supreme Court rendering a judgment adopting said schedule as to definite and specific tracts of land to which the Delawares are entitled under their claim.

A copy of this report is hereto annexed and marked "Exhibit 38."

Annexed to this report and referred to therein were certain exhibits (A to H), consisting of various letters which are sufficiently described in the said report and are not annexed thereto.

62. On April 28, 1903, the Indian Office reported to the Secretary, referring to Exhibits 28, 29, and 34, and to a letter from Richard C. Adams of April 18, 1903, and after reciting the claims made by the Delawares in regard to segregation and allotments of land and the objections of the Delawares to the receipt of applications on segregated lands, from the fact that this gives rise to contests, the Indian Office then referring to Exhibits 27, 29, 33, and 34, makes the unqualified statement, especially relying upon Exhibits 33 and 34, as follows:

From said monthly report (March 17, 1903, Exhibit 33) it would appear, as stated by Mr. Adams in his communication, that the Commission to the Five Civilized Tribes has, in accordance with the provisions of section 23 of the Cherokee agreement, segregated the 157,600 acres hereinbefore mentioned.

In this communication the Indian Office shows that said monthly report of March 17, 1903 (Exhibit 33), had been approved by the Interior Department on March 31, 1903.

The Indian Office reports further that it was the duty of the Dawes Commission to segregate these lands and that it did so. "This duty was obligatory and not discretionary."

It was further reported that the Dawes Commission had no authority to allot any segregated lands during the pendency of the Delaware-Cherokee suit, either to Delawares or to Cherokees, and that if any Cherokee citizen should apply for the allotment of segregated lands his application should be rejected; that the mere filing of this application and the marking of it "rejected" would lead to confusion. The Indian Office reports, therefore, that the Commission should be instructed as above set forth. A copy of this report of April 28, 1903, is hereto annexed and marked "Exhibit 39."

63. On April 30, 1903, the Indian Office made a further report to the Secretary, referring to its report of April 28, 1903 (Exhibit 39), the Dawes Commission's report of April 20, 1903 (Exhibit 38), and a further report of the Dawes Commission of October 20, 1902 (Exhibit 27).

After reciting and quoting from these reports, and after referring to the schedule of December 16, 1902, the stipulation of December 10, 1902, the resolution of the Dawes Commission of December 17, 1902, the second amended schedule of January 23, 1903, and especially after referring to the suggestion by the Commission that the Interior Department should guard against adverse action by the Supreme Court, the Indian Office reports as follows:

From the papers before this office it appears that the Commission has segregated lands for the Delawares, if any segregation has been made, in accordance with schedules furnished it by Mr. Adams; that the Dawes Commission should have made the segregation itself, using, if it desired, the schedules furnished by Mr. Adams.

The Indian Office reports that town sites which had been selected before the segregation was made should stand, but that those which

were selected after such segregation were probably invalid selections; that furthermore the Dawes Commission has no jurisdiction over the segregated lands at all, but would seem to have power to correct the segregation if inaccurate; that if there has been a segregation no citizen should be allowed to file upon these segregated lands.

The Indian Office takes the ground that the Supreme Court in the Delaware suit has no power to approve any schedule on file in said suit.

With reference to the recommendation of the Dawes Commission that the Department should intervene in said suit in the Supreme Court, the Indian Office requests that the Dawes Commission should furnish a corrected schedule for its information and "for such action with reference to bringing the matter to the attention of the court as the Department may consider proper. The Commission should be advised whether or not it has segregated the land. If the Interior Department decides that the land has not been segregated the Dawes Commission should be instructed to segregate it immediately." A copy of this report of April 30, 1903, is hereto annexed and marked "Exhibit 40."

64. On May 16, 1903, the Dawes Commission made a report to the Secretary of its work for the month of April, 1903, stating in substance that 7,800 tickets of admission to the Cherokee land office had been issued since January 1, 1903; that in April, 2,384 applications were received; that approval of 63 was withheld because they were in the segregated Delaware land; that 750 allotment certificates and an equal number of homestead certificates had been written, and that 500 allotment certificates and an equal number of homestead certificates had been executed and forwarded to the allottees in cases where there had been no contests.

It was stated that during the four months of January, February, March, and April, 1903, there had been 6,813 allotments, and 7,987 applications, of which 5,293 had been approved; that various applications had been withheld, including 176 because the land was embraced within the segregation. The particulars of various contests were given. A copy of this report is hereto annexed and marked "Exhibit 41."

65. During this period of time various Cherokees attempted to apply for allotments on Delaware lands in the possession and occupation of Delawares and embraced within this segregated land. Among such Delawares was John H. Secordyne, of White Oak, Ind. T., and his case is mentioned as an illustration of numerous others. On May 10 and May 12, 1903, he wrote to the Dawes Commission, complaining that certain lands which he held as a Delaware within said segregated lands had been filed on by one George Hurd, and asking for protection and information as to what should be done.

On May 20, 1903, the Dawes Commission wrote to the said John H. Secordyne in reply to said letters, inclosing plat of the land filed on by the said Hurd, a copy of which plat is hereto annexed and marked "Exhibit 42." Said Dawes Commission stated that there would be no allotment, however, until the Delaware-Cherokee suit was ended, but that Mr. Secordyne should appear before the Commission with a view to instituting contest proceedings. A copy of this letter of May 20, 1903, is hereto annexed and marked "Exhibit 43."

66. In view of the fact that Cherokees were filing applications for the Delaware segregated lands and contests in respect thereto were

being suggested by the Dawes Commission, although the suit of the Delawares against the Cherokees, authorized by the Curtis Act, had not yet been determined, and in view of the claim made by the Secretary of the Interior that no segregation had been made, and in order to protect the Delawares in their rights, the said Delawares, through their business committee and their said agent, Mr. Richard C. Adams and others, on June 2, 1903, brought suit in the supreme court of the District of Columbia against Ethan Allen Hitchcock, Secretary of the Interior, and Tams Bixby, Thomas B. Needles, Clifton R. Breckenridge, and William E. Stanley, as members of the Commission to the Five Civilized Tribes, in which suit, on said June 2, 1903, a restraining order was issued by Thomas H. Anderson, justice of said court, in accordance with the prayer of the bill of complaint.

67. The bill of complaint alleged in its substance the rights of the Delawares under the agreement of April 8, 1867; the terms of the Curtis Act authorizing the Delaware-Cherokee suit; the beginning and pendency of said suit; the terms of the Cherokee allotment act; the fact that Congress had provided for segregation of said lands before there should be any allotment of any Cherokee lands; the filing of said schedules showing 157,600 acres; the said acts of the Dawes Commission in segregating said lands; the wrongful acts of the Dawes Commission in allowing Cherokees generally to file applications for segregated lands and in allowing and urging that contests be made in respect thereto; the fact that the Delawares had protested; the fact that the acts of the Dawes Commission were wholly illegal; the particulars in which the Delawares would be damaged by reason of such illegal acts; the fact that there were numerous fraudulent and collusive filings by Cherokees on said segregated land, and the fact that the Delawares had otherwise no remedy at law.

In support of this bill affidavits were filed and letters from the Dawes Commission substantiating the matters alleged in the complaint.

Jurisdiction was obtained by service upon the Secretary of the Interior and the said Dawes Commission.

68. In said complaint in said suit the Delawares prayed that all applications for segregated lands should be stricken from the files and obliterated; that the defendants should cause to be removed from the segregated lands all persons claiming under any such illegal application filed after such segregation; that the defendants be restrained from receiving any applications on the segregated lands or from considering any contests based upon applications for said segregated land; that it be enjoined from considering that the statute of limitations as to contests with respect to any Delaware Indian had commenced to run; and that also defendants be enjoined from considering or receiving applications for allotments of the segregated lands or determining any question in respect thereto under the Cherokee allotment act, pending the decision by the supreme court of the Delaware-Cherokee suit.

69. On June 4, 1903, the Indian Office transmitted to the Secretary of the Interior a report of the Dawes Commission, dated May 16, 1903 (Exhibit 41), showing the work of said Commission for the month of April, 1903, with the recommendation that it be approved. A copy of said letter of June 4, 1903, is hereto annexed and marked "Exhibit 44." On June 6, 1903, the Secretary wrote the Commissioner of Indian Affairs, referring to said Exhibit 44, and approving by letter



to be inclosed to the Dawes Commission its said report of May 16, 1903 (Exhibit 41). A copy of said communication of June 6, 1903, is hereto annexed and marked "Exhibit 45."

70. On or about June 19, 1903, the said Secretary of the Interior verified his answer in said suit so brought against him June 2, 1903, and in said answer the said Secretary took the position that any segregation made or attempted to be made of the said Delaware lands by the Dawes Commission was subject to his approval as Secretary, and that he had never approved any segregation of such lands; that he was considering the question of approving such segregation when the suit was brought, and that further the approval by him of the segregation of such lands was a matter of the exercise of his judgment and discretion. A copy of said answer is hereto annexed and marked "Exhibit 46."

71. On or about June 23, 1903, the Delaware Indians, complainants in said suit against the Secretary and the Dawes Commission, amended their complaint in view of the claim made by said Secretary that said segregation had never been approved by him, and in connection with said amended complaint and as a part thereof the said Delaware Indians, complainants, referred to and annexed various of the said reports and communications hereinabove referred to, dated as follows, and which have been hereinbefore referred to, to wit:

- (a) Report Dawes Commission, October 20, 1902 (Exhibit 27).
- (b) Report of Indian Office, November 22, 1902 (Exhibit 28).
- (c) Secretary's action and letter, November 29, 1902 (Exhibit 29).
- (c-1) Report Dawes Commission, March 17, 1903 (Exhibit 33).
- (c-2) Report Indian Office thereon, March 27, 1903 (Exhibit 34).
- (c-3) Secretary's action thereon and letter, March 30, 1903 (Exhibit 35).
- (c-4) Report Dawes Commission, April 16, 1903 (Exhibit 36).
- (c-5) Report Indian Office, April 30, 1903 (Exhibit 37).
- (d) Commissioner's report referred to in Secretary's answer April 20, 1903 (Exhibit 38).
- (e) Report of Indian Office to Secretary, April 28, 1903 (Exhibit 39).
- (f) Report of Indian Office to Secretary, April 30, 1903 (Exhibit 40).
- (g) Report of Dawes Commission, May 16, 1903 (Exhibit 41).
- (h) Secretary's approval thereof, June 6, 1903 (Exhibit 45).

The said complainants in said amended complaint alleged that by reason of the said reports and action of the Dawes Commission and the Secretary of the Interior, as a matter of fact said segregation had been approved, and that subsequently to January 1, 1903, said Dawes Commission had been receiving numerous applications for allotments of Cherokee land—over 8,000 applications, covering more than 800,000 acres; that the approval of said allotments, or some of them, was based upon the prior segregation of said land, and that none of said allotments would be valid unless there had previously been said segregation according to the terms of section 23 of said Cherokee allotment act. A copy of said amended complaint (excluding said reports, which have been hereinbefore annexed as exhibits) is hereto annexed and marked "Exhibit 47."

72. In the latter part of June, 1903, in response to said amended complaint, the said Ethan Allen Hitchcock, Secretary of the Interior, filed his answer to such amended complaint, wherein and whereby he denied that the acts of his Department, of himself, and of said Dawes

Commission amounted to an approval of said segregation: denied that all of the acts of his Department were fully set forth in the exhibits annexed to said amended complaint: denied that the allotment of Cherokee lands made by the Dawes Commission was with his approval: alleged that the question of the approval of such segregation was being considered by him at the time of the institution of said suit, and further alleged that if said segregation had been made and approved by him, that nevertheless he, as such Secretary, under the law had the right to correct, modify, annul, vacate, or set it aside, as well as any allotments passed upon by said Dawes Commission. In support of his answer, said Secretary filed his own affidavit stating in substance that any segregation of Delaware lands must be approved by him; that he had the matter under advisement, but had not approved it; that it was a matter calling for his own discretion. In addition the Secretary submitted the affidavit of the chairman of the Dawes Commission, in which he stated that the said Dawes Commission had made a segregation of said land, but that there were errors in it; that there had been complaints in regard to it and that the same should be corrected. Copies of such answer of said Hitchcock, his said affidavit and the affidavit of the said Tams Bixby are hereto annexed and respectively marked Exhibits "48," "49," and "50."

73. On July 21, 1903, said Dawes Commission wrote to K. S. Murchison in response to a letter of July 16, 1903, stating that since July 1, 1903, 27 applications had been made by Cherokees for lands included in the present form of the Delaware segregation, upon the claim that that land belonged not to Delawares, but to Cherokees. The Commission described the lands so applied for and stated that such applications had not been passed upon and that no certificates of allotment had been issued.

74. On August 31, 1903, Tams Bixby, Commissioner in charge of the Cherokee land office, wrote to the said Richard C. Adams, stating that on July 10, 1903, one James S. Fuller had made application for his wife for land, which land was a portion of the Delaware segregated lands, the said Richard C. Adams being the Delaware in possession thereof; and in said communication the said Tams Bixby referred to section 69 of said Cherokee allotment act, and notified said Richard C. Adams to appear and make contest within nine months, as provided in said law. Copy of said communication is hereto annexed and marked "Exhibit 51."

75. Between September 9 and September 15 letters were written to the Secretary of the Interior protesting against the action of the Commission in allowing Cherokee to file on lands listed for the Delaware Indians and asking to be furnished with the names of persons who had made applications for Delaware segregated lands, with all particulars in connection thereto; and stating that great wrongs were being perpetrated upon the Delawares because they were not protected in their treaty rights, and because the Dawes Commission, after the issue of the restraining order, "continued to receive selections and applications for allotments" upon Delaware segregated lands.

These communications were answered or considered subsequently in the month of October, 1903, and will be referred to in due order.

76. On or about September 28, 1903, an opinion was rendered by the supreme court of the District of Columbia with reference to the continuance of the restraining order in said suit brought by the Delaware

Indians against Secretary Hitchcock and the Dawes Commission. Said opinion was rendered by Mr. Justice Anderson after considering all the facts very fully as set forth in the pleadings and exhibits which have been cited above. The court held that any segregation of lands made by the Dawes Commission must have the approval of the Secretary of the Interior and that said Secretary, as a matter of fact, did not approve said segregation, and hence the court dissolved the restraining order. The court, however, distinctly held that, inasmuch as there had not been any segregation pursuant to section 23 of the Cherokee allotment act and pursuant to the Curtis Act, that all the acts of the Dawes Commission in attempting to allot Cherokee lands were invalid and void, for the reason that the segregation must precede the allotment of lands in the Cherokee Nation.

The court also held that the Secretary, if he had segregated the land or had approved the segregation, he nevertheless, as an officer of the Government, had the power to revise or correct it. The court also held that the Delaware lands, when segregated, must remain apart and separate until the suit in the Supreme Court of the United States, brought by the Delawares against the Cherokees, should be decided.

The effect of this decision is to invalidate not only all applications for Delaware lands, but also all applications made by Cherokees for other lands in the Cherokee Nation. Copy of this decision is hereto annexed and marked "Exhibit 52."

77. On the same day, September 28, 1903, and before the rendition of said decision of Judge Anderson, the said Delawares, pursuant to authority granted in said Cherokee allotment act, section 68, commenced a suit in the Court of Claims, which is now pending (No. 24067) against the United States, for damages because of the failure of the United States to protect said Delawares under the stipulations and guarantees made by the United States in various treaties, and in said suit said Delawares specifically set forth the wrongful acts of the said Dawes Commission, which have been detailed above, and also wrongful acts on the part of individual members of said Commission, in that several of said members of said Commission had become interested in various land and trust companies and corporations in the Indian Territory, for the purpose of dealing in Indian lands and leases.

78. Shortly after said decision of Mr. Justice Anderson in said suit in the supreme court of the District of Columbia, and notwithstanding the fact that he had specifically found that the acts of the Dawes Commission in attempting to allot Cherokee lands prior to any segregation were wholly void and illegal, the said Dawes Commission made a public proclamation, which was circulated and posted throughout the Indian Territory, stating that Cherokee citizens not of Delaware blood occupying lands in the Delaware segregation would be permitted to make applications for the same, and that contests might be instituted in regard to the same, provided that such applications and contests should be suspended until the rights of the claimants should be determined, as provided in said Cherokee allotment act. A copy of said proclamation is hereto annexed and marked "Exhibit 53."

79. On October 6, 1903, the attorney for the Delawares wrote to said Dawes Commission, sending a copy of his letter to the Secretary of the Interior, and stating that he had been advised that the Secretary had instructed the Dawes Commission to report as to what lands should be omitted from the Delaware segregation and what should be included,

and requesting to be allowed to answer with respect to each particular tract in dispute. On the same day the supreme court of the District of Columbia entered its order dissolving the temporary injunction theretofore granted by Mr. Justice Anderson. A copy of said order is heretofore annexed and marked "Exhibit 54."

80. On October 6, 1903, the Secretary wrote the Dawes Commission stating that the segregation of Delaware lands had not been approved, instructing the Commission not to allot any Cherokee lands until there had been a segregation, and that after the segregation there should not be any filings allowed or applications for segregated lands. The Commission was instructed to ascertain what lands should be added to or taken from the lists theretofore filed. The Secretary directed that all Cherokee allotments should be suspended. Copy of this letter is hereto annexed and marked "Exhibit 55."

81. On October 7, 1903, the Dawes Commission made its report upon said letter, dated September 14, 1903, previously mentioned, which objected to the wrongs perpetrated upon the Delawares because the Dawes Commission continued to receive selections. Said Commission in its report denied such allegations, and referred to its report of October 2, 1903, in which report said Commission stated that—

a mistake was made in checking over lands embraced in Delaware segregation when certain applications were made, and through a mistake was signed and sent out. If there has been any other notice except the one sent to Mr. R. C. Adams himself, the Commission at this time is not aware, and certainly no attempt was made to avoid the restraining order referred to by Mr. Adams in his letter, and no intentional violation was made of it by the Commission, as strict orders were given immediately upon notice that such restraining order had been issued that no action whatever should be taken by the land office regarding lands embraced within the Delaware segregation.

82. On October 9, 1903, a letter was written to the Secretary in regard to the claims of the Delawares, requesting fair treatment from the Dawes Commission, requesting permission for the attorneys to appear before that Commission when it proposed to finally determine what lands shall be included in the Delaware segregating, and requesting that a complete record be made.

83. On October 9, 1903, the Secretary wrote conceding such right, but stated that segregation should not be delayed on account of the absence of parties or attorneys. A copy of this letter is hereto annexed and marked "Exhibit 56."

84. On October 10, 1903, the Indian Office made a report in regard to the report of said Dawes Commission, dated October 2, 1903, which report will be referred to hereafter.

85. On October 12, 1903, a letter was written to the Dawes Commission, asking for a complete record of each case in which Cherokee have applied for land in the Delaware segregation.

86. On October 12, 1903, the Dawes Commission, in reply, stated that they had not yet been instructed by the Secretary on this subject. A copy of this communication is hereto annexed and marked "Exhibit 57."

87. On October 15, 1903, the Secretary of the Interior wrote in reply to the letter of October 9, 1903, above referred to, which requested fair treatment from the Dawes Commission and requested permission to appear, stating in substance what was stated in his previous letter of October 9, 1903, namely, that Mr. Adams could appear, but that the

Commission should not be delayed on account of the absence of parties or attorneys. A copy of this communication is hereto annexed and marked "Exhibit 58."

88. On October 17, 1903, the Secretary wrote relative to the letter of September 9, 1903, protesting against the action of the Dawes Commission in allowing filings on Delaware lands, which letter was referred to the Dawes Commission September 19, 1903, and upon which said Commission reported October 2, 1903. This report was communicated to the Secretary by the Indian Office on October 10, 1903.

The Commissioner of Indian Affairs, in said report of October 10, 1903, quotes from the Department's letter of October 6, 1903, to the Dawes Commission, directing it to proceed to examine and report the lists of tracts of land which should be segregated for the Delawares. The Secretary quotes from the report of the Commissioner of Indian Affairs, which states that complaints can be investigated and that lands in the possession of Delawares should be included in the segregation. A copy of this communication of October 17, 1903, is hereto annexed and marked "Exhibit 59."

89. On October 21, 1903, the Dawes Commission wrote to Mr. Adams in reply to his letter of September 8, 1903, in which he asked to be furnished with the names of persons who have applied for lands embraced in the Delaware segregation. Said Commission claim that this information had been furnished, although this was a mistake at the time of the date of said letter. A copy of the letter of October 21, 1903, is hereto annexed and marked "Exhibit 60."

Again on October 21, 1903, the Secretary wrote with reference to the letter of September 14, 1903, which stated that great wrongs were being perpetrated upon the Delawares, especially because applications for allotments upon the segregated lands were received after the issuance of the restraining order, and said Secretary also referred to the report of the Dawes Commission, dated October 7, 1903, above mentioned.

The Secretary stated that the Dawes Commission denies the claim made in said letter, and refers to its report of October 2, 1903, above mentioned, which states that a mistake had been made in sending a notice of contest to Mr. Adams. And, in view of the instructions given to the Dawes Commission by said letter of October 6, 1903, the Secretary states that no further comment is necessary upon the report of the Commission. A copy of said communication of October 21, 1903, is hereto annexed and marked "Exhibit 61."

90. On October 22, 1903, a letter was written to the Dawes Commission stating that many letters had been received from Delawares to the effect that their homes and interests were being jeopardized and threatened by the claims of Cherokee to segregated lands and by reason of the filing of Cherokee applications therefor and the issuing of papers by the Commission in recognition of such rights, and stating that the Cherokee in many instances threatened the Delawares with ejection. The letter also requested advice as to whether the Commission has at any time recognized the right of selection of any of the segregated lands, and if not, what was the nature of the claim which Cherokee filed with the Commission in regard to said lands. It also asks for copies of such papers as are filed by such claimants. This letter is replied to on November 11, 1903, and will be referred to hereafter.

91. In view of the pendency of said suit brought by the Delawares against Ethan Allen Hitchcock, Secretary of the Interior, and the Dawes Commission, and the necessity of preparing evidence for the trial, notice of taking testimony was given on or about October 23, 1903. Copy of said notice is hereto annexed and marked "Exhibit 62." Pursuant to said notice and on the 23d and 24th of October, 1903, the testimony of the said Tams Bixby, acting chairman of the said Dawes Commission, was duly taken in said case in the city of Washington, D. C. A copy of the said testimony is hereto annexed and marked "Exhibit 63."

92. A summary of the testimony of said Bixby, given on said hearing, is as follows:

Mr. Bixby stated that the Cherokee lands had been surveyed at the date of the passage of the Curtis Act, but that the segregation of the Delaware lands was first acted upon after the passage of the Cherokee allotment act; that the resolution of December 17, 1903, was the first formal step taken by the Dawes Commission to segregate such lands; that said lands were segregated pursuant to this resolution by marking the selected sections upon a map in red ink, and that this map was marked according to the stipulation which had been filed in the Court of Claims, and a copy of which had been handed to the Dawes Commission.

He stated that the Commission also had another map in its possession showing the Delaware lands, which had been in the hands of the Commission for some time previously; that no adverse claim was made when the lands were segregated in December, 1902; that thereafter, in January, a correction of some 60 acres was made in the description, and that after this the Commission treated the lands as having been duly segregated.

There are some 300 Cherokees who claim portions of the segregated lands, and there are some 12 or more Delawares who claim that their lands are not included in the segregation.

In allotting lands in the Cherokee Nation each Cherokee gets from 60 to 600 acres, depending upon the value of the lands selected. No roll of the Delawares has been prepared. The Cherokee allotments began at Vinita January 4, 1903, pursuant to the public notice. The method of allotment in the Vinita office is that each Cherokee is credited with \$325 worth of land, and can select from 60 to 600 acres, depending upon the appraised value of the lands. The average amount for each Cherokee, excluding the segregated lands, is 110 acres.

Up to May, 1903, 4,000 Cherokees applied at Vinita, and up to the time of giving testimony some 8,000.

The Dawes Commission mailed certificates of allotment to Cherokees without approval by the Secretary of the Interior. Five thousand certificates are outstanding. Deeds will be given later which will be approved by the Secretary.

On January 1, 1903, Mr. Bixby knew of the pendency of the Delaware-Cherokee suit, and the allotments were made to Cherokee upon the theory that the segregation had been made. The Secretary made no objection to allotting the lands and the Commission thought it had power to segregate.

There has been no change in the segregation since January, 1903. Cherokee applications for Delaware lands have been held up, but Delawares have been notified to appear and contest within nine months.

The filing of applications was stopped about the middle of July, 1903, and then began again for a few days after the decision of Judge Anderson, and then were stopped again by reason of the order of the Secretary. The public notice, which has been referred to and is marked "Exhibit 53," was given shortly after the decision of Judge Anderson.

In all 10,000 or 12,000 Cherokee applications have been received, based upon the theory of the segregation. There is enough land in the Cherokee Nation to give each Cherokee 110 acres and also give 157,600 acres to the Delawares.

He admits that by the issue of certificates to 10,000 or 12,000 Cherokee the opportunity of a Delaware to select land outside of the segregated land is much lessened. He states that the segregated land is more valuable as agricultural lands than the lands which now remain open for selection outside the segregated lands, unless the question of minerals is considered; that the lands were not valued for the minerals, and mineral lands are appraised at small values.

There has been no land set apart of the segregation for any particular Delaware, but some Delawares may have applied for lands outside of the segregation.

93. On or about October 25, 1903, pursuant to requests from time to time made to it, the Dawes Commission prepared and handed to the attorneys for the Delawares a list of the names of persons who have applied for lands in the Cherokee Nation included within the Delaware segregation, the Dawes Commission stating that in all cases the applicant claimed that he was occupying the land applied for or had valuable improvements thereon. A copy of this list is hereto annexed and marked "Exhibit 64."

94. On October 29, 1903, the Secretary wrote to the Dawes Commission, referring to Department letter of October 6, 1903, which directed the Commission to investigate as to what tracts should be added to or stricken from the Delaware segregation.

The Secretary states that it is important that a final list should be approved as soon as possible, and the Commission is instructed to submit a new list, and the method of doing this is indicated. A copy of said communication is hereto annexed and marked "Exhibit 65."

95. On October 30, 1903, the attorneys for the Delawares received from the Secretary said Department letter of October 29, 1903, (Exhibit 65.) A copy of this communication is hereto annexed and marked "Exhibit 66."

96. On November 11, 1903, Mr. Tams Bixby, chairman of the Dawes Commission, wrote in reply to letter of October 22, 1903, which referred to numerous letters from Delaware Indians complaining about the action of the Cherokee, and in which requests were made for information as to the proceedings of the Commission concerning the segregated lands and copies of any documents or papers issued by the Commission when Cherokee applied for Delaware lands.

Mr. Bixby states that when Cherokee apply for Delaware lands their testimony is taken, but the application is not a regular one and action is suspended. A blank form of notice issued in such matters is inclosed, but all such matters are held up. A copy of said communication of November 11, 1903, is hereto annexed and marked "Exhibit 67," and a copy of said notice inclosed therewith is hereto annexed and marked "Exhibit 68."

On the same day, November 11, 1903, the said Tams Bixby wrote

acknowledging receipt of the letter of October 12, 1903. Mr. Bixby stated that such copy had already been furnished. A copy of this communication is hereto annexed and marked "Exhibit 69."

97. The foregoing are the facts concerning the rights of the Delawares to said 157,600 acres of land and the action of the Government in respect thereto, both in the legislative, executive, and judicial departments.

Further facts in regard to said matters generally are as follows:

98. In the year 1897, and at times when the opinions of the Interior Department were favorable to the claims of the Delawares, the said Cherokees employed numerous attorneys and agents, who came to the city of Washington and who took vigorous steps to oppose the Delawares in their claims for said lands. Furthermore, in the fall or winter of 1897 the Cherokee legislature passed various appropriation acts for the purpose of paying attorneys and other agents to oppose the claims of the Delawares and for the expenses of delegations to go to the city of Washington for such purposes. At such times the Delawares being all Cherokee citizens had an undivided interest in these moneys so appropriated, and yet notwithstanding this the moneys, a share of which they owned, were used by the Cherokee for the purpose of defeating the Delawares in their vested rights to these lands.

99. At said times the Delawares were unable to raise or procure any amount of funds except by private donations by individual Delawares, and thus said Delawares were at a great disadvantage, all of which is well known to the Cherokee.

100. As stated, the said Delawares have repeatedly requested the Interior Department to segregate said lands, and have complied with all recommendations of the Dawes Commission touching the filing or correcting of schedules showing said segregated lands, and the said Delawares fully believed that said segregation had been approved by the Secretary of the Interior, and verily believed that under said Cherokee allotment act the approval of the said Secretary was not necessary.

101. However, inasmuch as said Secretary has repudiated said schedule, the whole matter of the rights of the Delawares and the Cherokees is at present in the greatest confusion. As already stated, there are from 10,000 to 12,000 applications made by Cherokees for Cherokee land, and 5,000 or more certificates therefor have been issued. All of these applications and certificates seem to be invalid because of the fact that the court has held that no segregation has been made. Furthermore, there are 300 or more applications made by Cherokees for Delaware lands within said segregation. These, although held up or suspended, are on file in the Cherokee land office. Meanwhile, whether said land is segregated or not, individual Delawares have been unable to file even upon the lands which they occupy by reason of the provisions of the statute, nor have they been able to file upon the remaining lands of the Cherokee Nation because of the situation of affairs as stated. If the supreme court shall hold that the court below was right, then the question arises of how can the Delawares be protected if the best of the outlying lands are already occupied or applied for by Cherokees, and there are also applications pending by some of them for the lands within the segregation?

102. As shown in the foregoing papers and exhibits, the Delawares have protested in every possible way, both to the Departments and to



the courts, and although in the suit in the Supreme Court on appeal the parties are the Delawares against the Cherokees, and the United States is not a party, yet, nevertheless, the said Dawes Commission and the Interior Department have taken the position that the question of the particular lands to be adjudged to the Delawares is a question for the Interior Department, and that the only thing the Supreme Court has to do is to pass generally upon the rights of the Delawares, and that if any stipulation has been filed in said suit, it would not be binding upon the Interior Department. The said Dawes Commission has furthermore suggested that these matters be brought to the attention of the Supreme Court to prevent the possibility of that court approving the schedule filed in said cause. Said Delawares believe that such action on the part of the Dawes Commission is improper, as suggesting an intervention in a suit to which the Government is not a party.

103. During the summer of 1903 the President of the United States ordered an investigation to be made of the proceedings of the Dawes Commission and other officials in the Indian Territory, and such investigation is still in progress.

104. Hereto annexed and marked "Exhibit 70" is a history of the Delaware Indians, which has been prepared for the purpose of showing their loyalty to the United States; the treaty obligations of the United States to such Delawares; the breach of such obligations on the part of the United States, and the manner in which the Delawares have been wronged, not only in the past, but during the times concerning which this memorial specifically treats.

Your memorialists, therefore, respectfully ask that they be given by the Congress of the United States such relief in the premises as it may appear they are entitled to.

THE DELAWARE INDIANS RESIDING IN THE CHEROKEE NATION.

By RICHARD C. ADAMS,

*Attorney-in-Fact.*

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#### EXHIBIT I.

*Articles of agreement made this 8th day of April, A. D. 1867, between the Cherokee Nation, represented by William P. Ross, principal chief, Riley Keyes and Jesse Bushyhead, delegates duly authorized, parties of the first part, and the Delaware tribe of Indians, represented by John Connor, principal chief; Charles Journeycake, assistant chief; Isaac Journeycake and John Sarcovic, delegates for and on behalf of said Delaware tribe, duly authorized, witnesseth:*

Whereas by the fifteenth article of a certain treaty between the United States and the Cherokee Nation, ratified August 11, 1866, certain terms were provided, under which friendly Indians might be settled upon unoccupied lands in the Cherokee country east of the line of the ninety-sixth degree of west longitude, the price to be paid for such lands to be agreed on by the Indians to be thus located and the Cherokee Nation, subject to the approval of the President of the United States; and whereas by a treaty between the United States and the Delaware tribe of Indians, ratified August 10, 1866, the removal of the said Delawares to the Indian country south of Kansas was provided for; and, in the fourth article whereof, an agreement was made by the United States to sell to the Delawares a tract of land, being part of a tract the cession of which by the Cherokees to the United States was then contemplated; and whereas no such cession of land was made by the Cherokees to the United States, but, in lieu thereof, terms were provided, as hereinbefore mentioned, under which friendly Indians might be settled upon their lands; and whereas a full and free conference has been had between the representatives of the Cherokees and the Delawares, in view of the treaties herein referred to, looking to a location of the Delawares upon the Cherokee lands, and their consolidation with said Cherokee Nation:

Now, therefore, it is agreed between the parties hereto, subject to the approval of the President of the United States, as follows:

The Cherokees, parties of the first part, for and in consideration of certain payments, and the fulfillment of certain conditions hereinafter mentioned, agree to sell to the Delawares, for their occupancy, a quantity of land east of the line of the ninety-sixth degree west longitude, in the aggregate equal to 160 acres for each individual of the Delaware tribe who has been enrolled upon a certain register made February 18, 1867, by the Delaware agent, and on file in the office of Indian Affairs, being the list of Delawares who elect to remove to the "Indian country," to which list may be added, only with the consent of the Delaware council, the names of such other Delawares as may, within one month after the signing of this agreement, desire to be added thereto, and the selections of the lands to be purchased by the Delawares may be made by said Delawares in any part of the Cherokee Reservation east of said line of ninety-sixth degree, not already selected and in possession of other parties, and in case the Cherokee lands shall hereafter be allotted among the members of said nation it is agreed that the aggregate amount of land herein provided for the Delawares, to include their improvements according to the legal subdivisions when surveys are made—that is to say, 160 acres for each individual—shall be guaranteed to each Delaware incorporated by these articles into the Cherokee Nation, nor shall the continued ownership and occupancy of said land by any Delaware so registered be interfered with, in any manner whatever, without his consent, but shall be subject to the same conditions and restrictions as are by the laws of the Cherokee Nation imposed upon native citizens thereof.

Provided that nothing herein shall confer the right to alienate, convey, or dispose of any such lands, except in accordance with the constitution and laws of said Cherokee Nation.

And the said Delawares, parties of the second part, agree that there shall be paid to the said Cherokees, from the Delaware funds now held or hereafter received by the United States, a sum of money equal to \$1 per acre for the whole amount of 160 acres of land for every individual Delaware who has already been registered upon the aforesaid list, made February 18, 1867, with the additions thereto heretofore provided for.

And the Secretary of the Interior is authorized and requested to sell any United States stocks belonging to the Delawares to procure funds necessary to pay for said lands; but in case he shall not feel authorized, under existing treaties, to sell such bonds belonging to the Delawares, it is agreed that he may transfer such United States bonds to the Cherokee Nation, at their market value, at the date of such transfer.

And the said Delawares further agree that there shall be paid from their funds now or hereafter to come into possession of the United States a sum of money which shall sustain the same proportion to the existing Cherokee national fund that the number of Delawares registered as above mentioned and removing to the Indian country sustains to the whole number of Cherokees residing in the Cherokee Nation. And for the purpose of ascertaining such relative numbers, the registers of the Delawares herein referred to, with such additions as may be made within one month from the signing of this agreement, shall be the basis of calculation as to the Delawares, and an accurate census of the Cherokees residing in the Cherokee Nation shall be taken under the laws of that nation within four months, and properly certified copies thereof filed in the office of Indian Affairs, which shall be the basis of calculation as to the Cherokees.

And that there may be no doubt hereafter as to the amount to be contributed to the Cherokee national fund by the Delawares, it is hereby agreed by the parties hereto that the whole amount of the invested funds of the Cherokees, after deducting all just claims thereon, is \$678,000.

And the Delawares further agree, that in calculating the total amount of said national fund there shall be added to the said sum of \$678,000 the sum of \$1,000,000, being the estimated value of the Cherokee neutral lands in Kansas, thus making the whole Cherokee national fund \$1,678,000; and this last-mentioned sum shall be taken as the basis for calculating the amount which the Delawares are to pay into the common fund.

Provided, that as the \$678,000 of funds now on hand belonging to the Cherokees is chiefly composed of stocks of different values, the Secretary of the Interior may transfer from the Delawares to the Cherokees a proper proportion of the stocks now owned by the Delawares of like grade and value, which transfer shall be in part of the pro rata contribution herein provided for by the Delawares to the funds of the Cherokee Nation; but the balance of the pro rata contribution by the Delawares to said fund shall be in cash or United States bonds at their market value.

All cash, and all proceeds of stocks, whenever the same may fall due or be sold, received by the Cherokees from the Delawares under the agreement, shall be invested and applied in accordance with the 23d article of the treaty with the Cherokees, of August 11, 1866.

On the fulfillment by the Delawares of the foregoing stipulations, all the members of the tribe registered as above provided shall become members of the Cherokee Nation, with the same rights and immunities, and the same participation (and no other) in the national funds, as native Cherokees, save as hereinbefore provided.

And the children hereafter born of such Delawares so incorporated into the Cherokee Nation shall in all respects be regarded as native Cherokees.

WILL P. ROSS,  
*Principal Chief.*

RILEY KEYES,  
*Cherokee Delegation.*

JOHN (his x mark) CONNOR,  
*Principal Chief.*

CHARLES JOURNEYCAKE,  
ISAAC JOURNEYCAKE,  
JOHN (his x mark) SARCOXIE,  
*Delaware Delegation.*

Executed and delivered in our possession by the above-named delegates of the Cherokee and Delaware nations, at the city of Washington, in the District of Columbia, the day and year first above written.

JOHN G. PRATT,  
W. A. PHILLIPS,  
EDWARD S. MENAGETH.

DEPARTMENT OF THE INTERIOR,

*April 11, 1867.*

The within agreement between the Cherokee and Delaware tribes of Indians, concluded on the 8th instant, and providing for uniting the two tribes as contemplated by the Cherokee treaty of July 19, 1866, is respectfully submitted to the President, with the recommendation that it be approved.

O. H. BROWNING,

*Secretary.*

Approved April 11, 1867.

ANDREW JOHNSON.

## EXHIBIT 2.

*Memorandum—What the Delawares want.*

First. The Dawes Commission instructed in negotiating with the Cherokee Nation to exclude from such negotiation the 157,600 acres bought by the registered Delawares, or at least to negotiate with the Cherokee Nation no further relative to the land bought and paid for by the Delawares than to segregate the same to the Delawares as proposed by the Cherokee agreement with the Delawares of April 8, 1867, and article 4 of July 26, 1866, Delaware treaty, the reasons for the above request are to wit:

1. The Cherokee Nation sold such land to the registered Delawares April 8, 1867, and the registered Delawares then and there bought and paid for such land, and this land has not been but should be segregated to the registered Delawares, now that the survey of such country makes segregation for the first time practicable. (Memorandum of title attached.)

2. The Cherokee Nation having sold such land and received the money therefor, should not now control or interfere with the same regardless of the wishes of the purchasers to whom the Cherokee Nation guaranteed that "continued ownership and occupancy of said land by any Delaware so registered" shall not "be interfered with in any manner whatever without his consent." (Cherokee Nation's agreement with Delawares, April 8, 1867.)

3. The Delawares paid a larger price for this land than any other land then being sold to Indians; e.g., the Cherokee sold the Osages land adjacent on the west for 70 cents an acre; the Creek sold their land for Indian occupancy about this time for 30 cents an acre, and the Seminoles for 15 cents an acre. Indeed, the Delawares paid the same rate for the land they bought of the Cherokee that the Cherokee at that time conveyed the neutral lands in fee simple; to wit, 800,000 acres in Kansas for \$1 per acre.

3. The Delawares ask this instruction because they have been alarmed by the gross mismanagement of the Cherokee Nation.

For example: The Cherokee Nation persistently refused for many years to recognize the rights of the Delawares which they acquired by their agreement of 1867. Over the veto of their chief they refused the Delawares their rights, and the Shawnee and Freedmen as well (1883), and continued to deny them until Congress and the United States Supreme Court intervened and compelled them to do justice. (See Cherokee Nation against Delaware Indians, U. S. Supreme Court, Nov. 19, 1894.) Very recently, the Cherokee Nation has run up an unjustifiable indebtedness of over \$500,000, and indulged other misconduct which deeply affects the interests of the Delawares and which would well justify executive and judicial inquiry; e.g., on the plea of reducing the number of freedmen as listed on the so-called Wallace roll, a roll made ex parte and known to be fraudulent to the extent of over a thousand names, the Cherokee officials agreed to pay \$400,000 of the Cherokee fund, but, instead of diminishing said Wallace roll, a much larger number of fraudulent names were permitted to be put upon a new freedmen roll than the entire number of the Delaware tribe, thus injuring and diminishing wrongfully the pro rata share of the Delawares to the Cherokee tribal funds. (See pp. 472, 473, 474, Message and Documents, Int. Dept., vol. 2, 1896, 1897; and reports in Indian Office on freedmen roll.)

4. The Delawares further desire this instruction because of the grossly unjust suggestion made in some quarters that the Delawares should not be allowed 160 acres of land each, as guaranteed them by the Cherokee Nation, but that they should be allowed only the amount of land due other Cherokee citizens, which will be fractionally less land. (See Memorandum of title attached.)

## MEMORANDUM OF TITLE.

First. Delaware treaty of July 26, 1866, article 4:

"The United States agrees to sell to the Delaware Indians a tract of land \* \* \* which may be ceded by the Cherokees in the Indian country, to be selected by the Delawares \* \* \* to contain in the aggregate \* \* \* a quantity equal to 160 acres for each man, woman, and child who shall remove to said country. \* \* \* Said tract of country shall be set off with clearly and permanently marked boundaries by the United States; and also surveyed as public lands are surveyed, when the Delawares shall so request, when the same may be in whole or in part allotted by said council to each member of said tribe residing in said country, said allotment subject to the approval of the Secretary of the Interior."

Second. Cherokee agreement with the Delawares, April 8, 1867:

"The Cherokees, parties of the first part, for and in consideration of certain payments, and the fulfillment of certain conditions hereinafter mentioned, agree to sell to the Delawares, for their occupancy, a quantity of land east of the line of the 96th degree, west longitude, in the aggregate equal to 160 acres for each individual of the Delaware tribe, who has been enrolled upon a certain register made February 18, 1867, by the Delaware agent, and on file in the Office of Indian Affairs, to which may be added, only with the consent of the Delaware council, the names of such other Delawares as may, within one month of the signing of the agreement, desire to be added thereto; and the selections of the lands to be purchased by the Delawares may be made by said Delawares in any part of the Cherokee Reservation east of said line of 96 degrees not already selected and in possession of other parties; and in case the Cherokee lands shall hereafter be allotted among the members of said nation, it is agreed that the aggregate amount of land herein provided for the Delawares, to include their improvements according to the legal subdivisions when surveys are made—that is to say, 160 acres for each individual—shall be guaranteed to each Delaware incorporated by these articles into the Cherokee Nation; nor shall the continued ownership and occupancy of said land by any Delaware so registered be interfered with in any manner whatever without his consent."

Justice Brewer, commenting upon this, says:

"This contemplates personal selection of separate tracts by individual Delawares. Further, there is a guarantee 'to each Delaware incorporated by these articles into the Cherokee Nation' of the lands thus by him purchased, and that his ownership and occupancy shall not be interfered with in any manner without his consent—not the consent of the Delaware tribe."

Cherokee delegation to United States Senate Committee on Indian Affairs, on June 19, 1890, states:

"As has been seen, the Delawares purchased 157,600 acres of Cherokee lands lying east of the ninety-sixth degree. That was an absolute and unconditional purchase, and in which lands the Cherokee Nation has no title or interest." (See opinion Justice Nott, Court of Claims, Apr. 24, 1863, p. 6.)

Justice Nott says (see same, p. 5) relative to this land:

"It seems plain to this court that this part of the agreement is for the sale of a specific thing for a specific price \* \* \* they took 157,600 acres and paid \$157,000. The money was the consideration named for the land, and the land was the consideration named for the money."

The Supreme Court of the United States (*Cherokee Nation and U. S. v. Delaware Indians*, Nov. 19, 1894), answering the plea of counsel for Cherokees that the consideration paid by the Delawares was inadequate, says:

"Commenting generally upon this line of argument, it is rather an endeavor to induce the court to reconstruct the contract and frame one more in accord with what, from the present standpoint, would seem to have been equitable than to interpret the contract which the parties made, in accordance with the plain import of the language which they used."

The court further says:

"And as a further consideration for the payment of this sum for the purchase of homes for the Delawares were guaranteed not merely the continued occupancy thereof, but also that, in case of subsequent allotment in severalty of the entire body of land among the members of the Cherokee Nation, they should receive an aggregate amount equal to that which they had purchased, and such a distribution as would secure to them the homes upon which they had settled, together with their improvements."

In an opinion given by William W. Hastings, ex-attorney-general of the Cherokee Nation and present delegate of the Cherokee Nation to Washington, D. C., rendered December 2, 1896, he says:

"With this decision (U. S. Sup. Ct. 155, p. 120) before me, together with the agreement dated April 8, 1867, which authorized it, I am of the opinion that in case

any registered Delaware goes upon the public domain of the Cherokee Nation and selects 160 acres of land, or should he acquire peaceable possession of that amount by purchase or otherwise, he would be entitled to that amount, and to that tract of his selection when the allotment of the lands of the Cherokee Nation are made among the citizens thereof."

The children of registered Delawares now enrolled as Cherokee citizens and born since Delawares removed to the Cherokee Nation occupy the position of other Cherokee citizens, to whose interests this memorandum does not relate.

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EXHIBIT 3.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
Washington, May 4, 1897.

THE SECRETARY OF THE INTERIOR.

SIR: I am in receipt by Department reference, for immediate report, of a memorandum of "What the Delawares want," from which it appears that R. C. Adams and John Bullette, Delaware representatives, ask that the Commission to the Five Civilized Tribes "be instructed in negotiating with the Cherokee Nation to exclude from such negotiations the 157,600 acres bought by the registered Delawares, or at least to negotiate with the Cherokee Nation no further relative to the land bought and paid for by the Delawares than to segregate the same to the Delawares, as proposed by the Cherokee agreement with the Delawares of April 8, 1867, and article 4 of July 26, 1866, Delaware treaty."

Five reasons are assigned why the Commission should be instructed as requested, briefly, as follows, viz:

1. That the Cherokee Nation sold the quantity of land stated to the registered Delawares April 8, 1867;
2. That having so sold the land and received the money for it, the Cherokee Nation should not be permitted to control or interfere with it regardless of the wishes of the purchasers, the registered Delawares;
3. That the Delawares paid a larger price for the land than was paid the other Indians for lands in the Indian Territory, bought about the same time;
4. That the Delawares have become alarmed by the gross mismanagement of the Cherokee Nation; and
5. That in some quarters the grossly unjust suggestion has been made that the Delawares should not be allowed 160 acres of land each as guaranteed them by the Cherokee Nation, but should only be given the amount of land to which other citizens of the Cherokee Nation will be entitled, which will be fractionally less.

Attached to this request of the Delaware representatives is a statement referred to as "Memorandum of title." From the concluding paragraph of this memorandum it appears that the claim to 160 acres per capita set up on behalf of the Delawares is not intended to include the children of Delawares born since the consummation of the agreement between the Cherokee Nation and the Delaware tribe, by which 985 of the members of the latter became citizens of the said nation, but extends only to the right of said 985 Delawares to 160 acres of land when allotments to the citizens of the Cherokee Nation come to be made.

There being no question, therefore, as to the right of the children of the registered Delawares, who are admitted to have only such right in the nation as are enjoyed by the native Cherokees, it would seem that no elaborate discussion of the question raised in the memorandum before me as to the right of the registered Delawares themselves to receive 160 acres each is necessary, since the Supreme Court in the Cherokee Nation *v.* Journeycake (155 U. S., 196), in unequivocal language, decided that they have that right. The court said (p. 213), "and as a further consideration for the payment of this sum for the purchase of homes the Delawares were guaranteed not merely the continued occupancy thereof, but also that in case of a subsequent allotment in severalty of the entire body of lands among the members of the Cherokee Nation, they should receive an aggregate amount equal to that which they had purchased, and such a distribution as would secure to them their homes upon which they had settled, together with their improvements. So that if, when the allotment was made, there was for any reason not land enough to secure to each member of the Cherokee Nation 160 acres, the Delawares were to have at least that amount, and the deficiency would have to be borne by the native Cherokees pro rata. In other words, there was no purchase of a distinct body of lands, as in the case of the settlement of other Indian tribes as tribes within the limits of the Cherokee reservation. The individual

Delawares took their homes in and remaining in the Cherokee Reservation, and as lands to be considered in any subsequent allotment in severalty among the members of the Cherokee Nation." (The italics are mine.)

This language of the Supreme Court I regard as conclusive of the question and in view of the rights of the Delawares, their request that the Dawes Commission be instructed with relation thereto is not unreasonable, and although it would not be competent for the United States and the Cherokee Nation in any agreement they might enter into, to abrogate the Cherokee-Delaware agreement on the subject, or disturb the vested rights of the Delawares under that agreement, without their consent formally given, much confusion and delay might be avoided if the Department would communicate the true situation to the Commission before any agreement is concluded with the Cherokee Nation affecting the subject, and I accordingly so recommend, provided you agree with me as to the effect of the decision of the Supreme Court above cited on the subject.

The memorandum from the Delaware representatives is herewith returned.

Very respectfully, your obedient servant,

THOS. P. SMITH,  
*Acting Commissioner.*

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EXHIBIT 4.

DEPARTMENT OF THE INTERIOR,  
*Washington, May 7, 1897.*

THE CHAIRMAN, COMMISSION TO THE FIVE CIVILIZED TRIBES,  
*Muscogee, Ind. T.*

SIR: I transmit herewith copy of the memorandum filed by R. C. Adams and John Bullette, Delaware representatives, asking that the Commission to the Five Civilized Tribes "be instructed, in negotiating with the Cherokee Nation, to exclude from such negotiations the 157,600 acres bought by the registered Delawares, or at least to negotiate with the Cherokee Nation no further relative to the land bought and paid for by the Delawares; that to segregate the same to the Delawares as proposed by the Cherokee agreement with the Delawares of April 8, 1867, and article 4 of July 26, 1866, Delaware treaty."

I also transmit copy of a communication of 4th instant from the Commissioner of Indian Affairs, to whom the matter was referred.

The Commissioner refers to the decision of the Supreme Court (*Cherokee Nation v. Journeycake*, 155 U. S., 196) as conclusive as to the rights of the Delawares, and states that their request is not unreasonable, and though it would not be competent for the United States and the Cherokee Nation, in any agreement they might enter into, to abrogate the Cherokee-Delaware agreement on the subject or disturb the vested rights of the Delawares under that agreement without their consent formally given, much confusion and delay might be avoided if the Department would communicate the true situation to the Commission before any agreement is concluded with the Cherokee Nation affecting the subject.

Concurring in the views of the Commissioner as to the effect of the decision of the Supreme Court above referred to, as to the rights of the Delawares in their purchased lands, I am of opinion that in negotiating with the Cherokees the Commission should be governed by said decision, unless the Delawares formally consent to waive any of their vested rights.

Very respectfully,

C. X. BLISS, *Secretary.*

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EXHIBIT 5.

DEPARTMENT OF THE INTERIOR,  
*Washington, May 8, 1897.*

MR. R. C. ADAMS,  
MR. JOHN BULLETTE,  
*Delaware Indian Representatives, Washington, D. C.*

GENTLEMEN: The Department is in receipt from you of a memorandum of "What the Delawares want" and accompanying papers, wherein you ask that the Commission to the Five Civilized Tribes "be instructed in negotiating with the Cherokee Nation to exclude from such negotiations the 157,600 acres bought by the registered Delawares, or at least to negotiate with the Cherokee Nation no further relative to



the land bought and paid for by the Delawares than to segregate the same to the Delawares, as proposed by the Cherokee agreement with the Delawares of April 8, 1867, and article 4 of July 26, 1866, Delaware treaty."

In response thereto I transmit herewith copy of Department letter of 7th instant to the Chairman, Commission to the Five Civilized Tribes, and also copy of Indian Office report of 4th instant in relation to this matter.

I also inclose copies of the papers filed by you.

Very respectfully,

THOS. RYAN, *Acting Secretary.*

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EXHIBIT 6.

WASHINGTON, D. C., *June 23, 1897.*

THE SECRETARY OF THE INTERIOR.

SIR: We the undersigned and duly authorized representatives of the Delaware tribe of Indians, residing in the Cherokee Nation in Indian Territory, respectfully represent that because of the failure of the Cherokee to avail themselves of the benefits offered in the act approved June 7, 1897, by negotiating and treating with the Dawes Commission with a view to the allotment in severalty of the lands in the Cherokee country, and such negotiations having apparently come to an end, we appear before you in this petition for the purpose of presenting the desire of the Delawares, who are a part of the Cherokee Nation, to treat with the said Dawes Commission separately from the Cherokee, with a view to having the 157,600 acres of land purchased by the Delawares segregated and allotted in severalty to the Delawares, without restriction as to alienation and with proper exemptions from taxation.

Attention is invited to the provisions of article 15 of the treaty with the Cherokee (14 St. L., 803), and the fourth article of the treaty with the Delawares (14 St. L., 794), and to the agreement based on said treaty provisions, entered into between the Delawares and Cherokee on April 8, 1867, copy of which agreement is hereto attached marked "Exhibit A."

The rights of the Delawares under the treaties and agreement are clearly defined and well established by the opinion handed down by Chief Justice Nott of the Court of Claims. (See Ct. Cl., 28, p. 281.)

For a further construction upon this agreement see *Cherokee Nation v. Journey-cake* (155 U. S., p. 196).

The rights of the Delawares have been recognized and their request to have the 157,600 acres of land purchased by them segregated before treating with the Cherokee has been favorably considered, as will be seen by letter of the Secretary of the Interior dated May 7, addressed to the chairman of the Commission to the Five Civilized Tribes, inclosing a letter from Acting Commissioner of Indian Affairs dated May 4, 1897.

The desire of the Delawares and the object of this petition is to have such steps taken as will result in a separate treaty with a view to allotment in severalty with the Delawares, who absolutely own the land in question.

The Delawares are amply able and well qualified, as will be learned upon investigation, to take care of themselves, and it is respectfully but urgently represented that the Delawares no longer wish to submit to the domination over them by the Cherokee.

This condition has been brought about by the action of the Cherokee government in admitting a large number of names to the Cherokee roll through fraud and for the purpose of revenue, which additions to the Cherokee roll decreases very materially the value of the individual interest the Delawares have in 157,600 acres of land yet to be segregated as selected from the lands of the Cherokee Nation.

It can safely be stated that if the Delawares should endeavor to-day to select that amount of land it would be necessary for them to expend a large amount of money to purchase the improvements made upon the lands by the large influx of fraudulent additions to the Cherokee roll.

The Delawares come to the Government in good faith, but thoroughly in earnest, and plead to have their petition granted for the reason that they desire immediate segregation of land purchased by them and the allotment in severalty.

This can safely be done by the Government for the reason that the Delawares have always been law-abiding and have proved themselves to be self-supporting and are well equipped to look after their interests individually should such allotment be made.

It would appear under article 5 of the treaty with the Delawares that the Dawes Commission can treat with them separately from the Cherokee. While the Delawares have separate and distinct individual rights and have maintained distinct tribal autonomy, they nevertheless became merged into and a part of the Cherokee Nation, one of the Five Civilized Tribes, under the agreement entered into April 8, 1867, and as such part of one of the Five Civilized Tribes it would appear that so far as their separate and well-defined interests are concerned treaty can be had with them.

Said article 5 of the Delaware treaty provides:

"The United States guarantees to said Delawares peaceable possession of their new home herein provided to be selected for them in the Indian country, and protection from hostile and internal strife and civil war, and a full and just participation in any general council or Territorial government that may be established for the Indians and tribes residing in said country."

A liberal construction of this article would show that the Delawares, as a part of one of the Five Civilized Tribes, are entitled to be heard in any negotiations which may be had under the law affecting their interests or the interests of the nation to which they are attached and of which they are a part, and it is further argued that this course can be pursued with a view to carrying out the policy of the Congress of the United States and of the Administration.

A further desire of the Delawares and object of this petition is to have the Dawes Commission determine and settle the rights of the Delawares, under their agreement with the Cherokee, in the residue of the Cherokee lands after segregating all lands purchased from the Cherokee, and in the Cherokee national fund.

The agreement between the Cherokee and the Delawares provides as follows:

"On the fulfillment by the Delawares of the foregoing stipulations, all the members of the tribe registered as above provided shall become members of the Cherokee Nation, with the same rights and annuities and the same participation (and no other) in the national funds as native Cherokees, save as hereinbefore provided, \* \* \* and the children hereafter born of said Delawares so incorporated into the Cherokee Nation shall in all respects be regarded as native Cherokees."

Under those provisions the Delawares claim the same right in every respect as the native Cherokees enjoy.

We append hereto a copy of papers heretofore filed before the Dawes Commission and the Interior Department, to wit: Memoranda entitled "What the Delawares want;" a letter from the Hon. D. W. Bushyhead, former chief of the Cherokee Nation; a letter of Thomas P. Smith, Acting Commissioner of Indian Affairs, to the Secretary of Interior; a letter of the Secretary of the Interior to the Commission of the Five Civilized Tribes, and a letter of Thomas Ryan, Acting Secretary of the Interior, to the undersigned Delaware Indian representatives.

We further append several valuable affidavits not heretofore used in this behalf.

A reading of the fifteenth article of the treaty of 1866 will show that provision was made for the removal to the Cherokee Nation of two classes of Indian tribes; first, those who did not desire to maintain in full force their tribal relations; second, those who did. It will be seen that in the first instance no land was to be specifically set aside, and they were allowed no selection other than as citizens of the Cherokee Nation. Under this provision the Shawnees bought citizenship in the Cherokee Nation and removed thereto. In the second provision selection of land was provided for and the entity of the tribe was preserved, and it was under this provision that the Delawares made their agreement with the Cherokee Nation and removed to the country. And it is under this provision the Delawares claim that, while they have all the rights of native Cherokees, they have the further right to the lands they bought and paid for, the title to which is guaranteed under the treaty and agreement above mentioned, and having such rights and having preserved their entity as the Delaware tribe, they urge the granting of this petition.

R. C. ADAMS,  
JNO. BULLETTE.

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#### EXHIBIT 7.

S. H. Benge, of lawful age, residing at Fort Gibson, Cherokee Nation, Indian Territory, having been duly sworn, states on his oath that to the best of his knowledge he was a member of the Cherokee national senate at the time the Cherokee Nation made an agreement with the Delawares in 1867; that he was familiar with said agreement; that he was a witness to the transaction, and a member of the Senate that ratified the agreement; that at that time the finances of the Cherokee Nation were at a very low ebb; the war having just ended, the nation badly in debt, and the

treasury empty, and when a trade was made with the Delawares and they agreed to pay \$121,824.02 for the right of citizenship for themselves and children it was not enough to supply the deficiency in the treasury, and William P. Ross, as principal chief of the Cherokee Nation, under the authority of the fifteenth article of the treaty of 1866, which deponent helped to make, and Chief Ross having the approval of the leading men of the Cherokee Nation, and thinking it was a good bargain because of the needs of the treasury at that time, offered to the Delawares to sell each one of the registered Delawares the right of selecting 160 acres of land each, which brought the Cherokee Nation the additional large sum of \$157,600. This was considered by the Cherokee Nation at this time a very fortunate deal for them (the Cherokees) as they had a very large amount of land and a very small amount of money.

In the case of the Shawnees, they simply bought the right of citizenship, without any additional rights.

S. H. BENGE.

In witness whereof, I hereto attach my hand and seal this, the 10th day of June, A. D., 1897.

INDIAN TERRITORY, *Northern Judicial Division, ss:*

Before me, the undersigned authority, personally appeared S. H. Benge, to me well known, who acknowledged the execution of the within instrument as his own voluntary act and deed.

R. E. BUTLER, *Notary Public.*

My commission expires February 1, 1900.

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EXHIBIT 8.

INDIAN TERRITORY, *Northern District, ss:*

Rev. Williams Adams, of lawful age, a resident of Alluwe, Cherokee Nation, Indian Territory, having been duly sworn, states on his oath that to the best of his knowledge that—

He is a member of the Delaware tribe of Indians and that his name appears upon the registered roll of Delawares of February 18, 1867; that he hesitated several days before agreeing to remove to the Cherokee Nation, until he was assured by John Connor, Jim Connor, and Charles Jourmeyake that the Delawares who removed to the Cherokee Nation should not only enjoy all the rights, privileges, and immunities of a native Cherokee, but that every member whose name appeared upon the register would be assured 160 acres of land, nor should his continued ownership and occupancy of such be interfered with in any manner whatever without his consent; that in case of future allotment that the registered Delawares were guaranteed that amount independent of their communion interests in the Cherokee Nation, and relying upon these statements as above set forth, and believing that they would be faithfully carried out, I consented to remove to the Cherokee Nation.

That before the Delawares removed to the Cherokee Nation affiant was clerk of the Delaware council and had intended to take his allotment in the State of Kansas, but on account of his occupying the position that he did and being a minister of the gospel the Delawares were very anxious that I remove with them, but I refused to do so until the agreement was explained to me as I have above stated.

WILLIAM ADAMS.

Subscribed and sworn to before me this 12th day of June, A. D. 1897.

[SEAL.]

J. A. TILLOTSON, *Notary Public.*

My commission expires June 8, 1899.

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EXHIBIT 9.

PIPER, KANS., *June 14, 1897.*

John G. Pratt, of lawful age, a resident of Piper, Wyandotte County, Kans., having been duly sworn, states on his oath to the best of his knowledge that he was United States Delaware-Indian agent at the time the Cherokee Nation made an agreement with the Delaware Indians in 1867; that he was familiar with said agreement and that he was a witness to the transaction, and at the time the Cherokees were very desirous of the Delawares removing to the Cherokee Nation, and that the Delawares bought 160 acres of land for each man, woman, and child who should remove

to the Cherokee Nation and whose name appeared upon a certain register made by him. This land was to be theirs in fee simple, and the entire amount was to be deducted from the Cherokee domain before allotment could take place. In addition to paying \$1 per acre for 160 acres of land each, the Delawares paid a large sum of money, which was to make them equal in all rights, privileges, and immunities of a native Cherokee, and the children born of such Delawares were to be considered in all respects as a native-born Cherokee; that it was the understanding at that time that a registered Delaware or heirs, in case of allotment, would get 160 acres of land and whatever a Cherokee got besides, but that their children would only get what a Cherokee would get.

JOHN G. PRATT.

The above affidavit sworn to and subscribed by John G. Pratt before me (David Holyfield), a notary public in and for the county of Wyandotte and State of Kansas, this 14th day of June, A. D. 1897.

DAVID HOLYFIELD, *Notary Public.*

My commission expires October 6, 1900.

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#### EXHIBIT 10.

#### THE SECRETARY OF THE INTERIOR.

SIR: The Commission to the Five Civilized Tribes are in receipt of a letter addressed to the Secretary, of date June 23, 1897, signed by R. C. Adams and John Bullette, representing the Delaware tribe of Indians, which has been referred to them "for their information and such consideration as in their discretion may be deemed proper and expedient, and for an early report on any proposed action."

The Commission has given the subject-matter of said communication careful consideration and report:

This communication to the Secretary was preceded by one entitled "A memorandum of what the Delawares want," which has been referred to, and received the recommendation of the honorable Commissioner of Indian Affairs and forwarded with the approval of the honorable Secretary to the Commission for its guidance. In this memorandum the Delawares ask that the Commission "be instructed, in negotiating with the Cherokees, to exclude from such negotiation the 157,000 acres bought by the registered Delawares, or at least to negotiate with the Cherokee Nation no further relative to the lands bought and paid for by the Delawares than to segregate the same to the Delawares, as proposed by the Cherokee agreement with the Delawares of April 8, 1867, and article 4, July 26, 1866, Delaware treaty."

The communication of Messrs. Adams and Bullette is based on the assumption that the negotiations of this Commission with the Cherokee in respect to allotment of their lands in severalty "had failed," and that the same has "apparently come to an end." There has been no "failure," nor have negotiations "come to an end." They have only been postponed for the present at the request of the Cherokee commissioners to enable them to confer with their people because of the new conditions in which they find themselves, growing out of recent legislations causing radical changes in their government to take effect next January unless modified by agreements made in the meantime. It is true, however, that the subject-matter now under consideration has proved a serious obstacle to a successful negotiation, and will, unless a solution of the difficulty is found, be likely to block all negotiation looking to an equitable allotment of their lands among their citizens entitled to them. The disposition of the 157,600 acres claimed by the Delawares must first be settled before there can be any agreement allotting their lands among their citizen Indians, which is the main object of the present Commission, the amount of each allottee depending upon the disposition of this large tract of 157,600 acres purchased by the Delawares of the Cherokee in 1867.

The request of the Delawares in the communication under consideration is that the Commission be instructed to "treat with the Delawares separately from the Cherokee with a view to having the 157,600 acres of land purchased by the Delawares segregated and allotted in severalty to the Delawares without restriction as to alienation and with proper exemptions as to taxation."

That there must be some solution of this question is apparent. But the method of negotiation suggested—viz, that the United States Commission treat directly with the Delawares also and define the lines of their purchase and then allot it among the registered Delawares without the voice of other parties affected by the proceeding—seems to this Commission to encounter insurmountable difficulties.

First. This was a purchase made thirty years ago and by its very terms "the selection of the lands to be purchased by the Delawares may be made by said Delawares in any part of the Cherokee Reservation east of the line of 90 degrees not already selected and in possession of other parties." They entered into occupation of that purchase and have occupied just what they selected under that purchase ever since with the acquiescence of the Cherokee. The lines were thus established by the parties themselves, and if there is anything wrong about lines thus established it is their own fault. But if there is anything wrong their rearrangement of lines with the United States Commission alone can not affect other parties not participating in it.

Second. The law creating this Commission authorized them to treat with the Five Civilized Tribes only, naming them, and the Delawares are not one of them. They have no authority to treat with others.

Third. By the very agreement of purchase it was stipulated that "on the fulfillment by the Delawares of the foregoing stipulations all the members of the tribe registered as above provided shall become members of the Cherokee Nation, with all the voice, rights, and immunities and the same participation (and no other) in the national funds as native Cherokee, save as hereinbefore provided. And the children hereafter born of such Delawares so incorporated into the Cherokee Nation shall in all respects be regarded as native Cherokee."

It follows that every one of these Delawares became *ipso facto* as much Cherokee as the Cherokee themselves, and are in law, whatever be the fact, represented in every conference of the Cherokee. To negotiate with the Delawares separately is in law negotiating with a part of the Cherokee only.

Third. After "all the members of the Delaware tribe shall become members of the Cherokee Nation," as is provided in the treaty of 1856 and the agreement of 1867 made in conformity with it, it is difficult to see what is left of the Delaware tribe to negotiate with, or for any other purpose except, it may be, to hold the title of the original purchase in trust and for the benefit of those who had become Cherokee, which contemplated allotment.

Fourth. The great obstacle to a successful negotiation with the Cherokee for allotment lies in a difference of interpretation of the agreement of April 8, 1867, under which the purchase by the Delawares was made.

Their claim is that for the sale of their lands in Kansas they were to receive a specific tract of land in the Cherokee Nation equal to 160 acres each for every "registered Delaware," and that in addition and for a further consideration provided for in the treaty they purchased admission to full citizenship in the nation, *viz.*, a payment into the funds of the nation a specific sum provided for in the treaty, and took with it the further guaranty that when the lands of the nation were allotted their share should be at least 160 acres, whatever that left for the original Cherokee; that is, that they are entitled to two allotments of 160 acres each, one out of their own lands purchased and paid for by them, in which the Cherokee have no interest, the other as Cherokee citizens in the Cherokee lands, with this guaranty that this latter should be at least 160 acres. The Cherokee, on the other hand, claim that the Delawares are entitled to only one allotment, which is guaranteed to be at least 160 acres. This contention seems to be the only obstacle to an agreement for allotment, the Cherokee and Delawares both being anxious for it, but each insisting on its construction of the agreement. Could an authoritative official construction be put upon that instrument, by which the Commission and the tribes must be governed in this regard, the Commission believes that there would then be but little difficulty in coming to a satisfactory agreement. Although the Supreme Court and the Court of Claims have both recently passed, in different cases, upon this agreement, and although their language seems strongly inclined to the side of the Delaware claim, yet there is no direct decision that the allotment in the land purchased is in addition to one in the common land of the Cherokee accruing to the right of citizenship so as to give to each registered Delaware two allotments of 160 acres each, one in the specific purchase and one in the common lands. The Commission understands the instructions received from the Department in the letter of the Commissioner of Indian Affairs of May 4, 1897, to the honorable Secretary, reporting on the reference to him of "What the Delawares want," and the Secretary's letter of the 7th May forwarding the same with his approval to the Commission, to follow these decisions. Each uses language strongly inclined to the contention of the Delawares, but nowhere directly decides that they are entitled to two allotments of 160 acres each.

If the Commission could be furnished with an official opinion instructing them, in language so explicit that neither tribe could doubt its language, that there should be either two or one such allotment they believe that the obstacles in the way of a final agreement would in a great measure disappear.

They therefore respectfully request that they may be furnished, at as early a day

as is convenient, with such express and explicit instructions as neither tribe can misunderstand.

The Commission desires, in this connection, to call attention to one feature of the prayer of the Delawares in their communication to the Secretary now under consideration. While asking for two allotments of 160 acres each they take care to ask that the one allotted out of the purchase be without restriction as to alienation. Now these allotments are for homesteads, two for each allottee, and as but one can be occupied at a time they propose to sell out the other. All experience has shown such unrestricted opportunity for sale to result, in an incredibly short space of time, in the disappearance of every homestead so open to sale. This is a policy which ought not to be sanctioned by the Government. They have to add, also, that if all other methods of securing the allotment of the Delaware purchase fail it is perfectly competent for the Secretary to order it done under the "severalty act" (Stat. L., 24, p. 388). In that case the allottee could not sell out without the consent of Congress under twenty-five years and would become an American citizen on taking his allotment.

For these reasons the Commission is of opinion that it should not be directed to negotiate with the Delaware Indians separately from the Cherokees as asked for by the Delawares in the communication under consideration. The Commission has also to ask, in addition to the instruction as to the quantity of land each Delaware is entitled to under the agreement of purchase and admission to citizenship, that they also be instructed whether they shall add the Delawares to the citizenship roll of the Cherokees in the revision of that roll as required by the last two Indian appropriation bills. This would seem to be necessary if they are to share as Cherokee citizens in the allotment of their lands. But it involves another difficulty. If they are absorbed into the Cherokee Nation, what becomes of their tribal existence as Delawares, and what becomes of their title to the lands purchased? They hold title to the purchase in their capacity as Delawares, while their interest in the common property of the Cherokees is that of Cherokee citizens. It seems to the Commission that, if it be decided that they are interested in both, the only safe way would be to first allot to them as Delawares their land purchased as Delawares, and afterwards enroll them as Cherokees and allot to them as Cherokee citizens their share in the common lands. But on this point they wish instructions.

All of which is respectfully submitted.

With great respect,

HENRY L. DAWES,

*Chairman of the Commission to the Five Civilized Tribes.*

PITTSFIELD, MASS., July 15, 1897.

The papers referred to the Commission are herewith returned.

#### EXHIBIT II.

*Contract by and between George Bullette, of Tulsa, John Young and John Saracovic, jr., of Bartlesville, Henry Armstrong, of Coodys Bluff, and John H. Secordyne, of White Oak, all of the Indian Territory, parties of the first part, and Richard C. Adams, of Fort Gibson, and John Bullette, of Claremore, Ind. T., parties of the second part.*

Know all men by these presents, that by virtue of an act passed by the registered Delawares and the Delaware tribe of Indians, in general council assembled, at Bartlesville, Ind. T., on the 29th day of July, 1898, authorizing "the employment of necessary counsel to bring suit in the United States Court of Claims against the Cherokee Nation under the provisions of the act of Congress, approved June 28, 1898, and for other purposes," copy of which is attached hereto and made a part of this contract, and

Whereas the scope of the authority given in said act to said parties of the first part being full and complete for the purposes indicated in said act, to wit, to employ attorneys to bring suit against the Cherokee Nation, and to represent the Delaware Indians in court and before the Departments or any commissions or tribunals of the United States.

The reason for exercising such authority is to secure the rights of the registered Delawares and other Delawares under agreement with the Cherokee Nation, which rights are denied by said Cherokees; and for further reason of the desire of the Delaware Indians to obtain a final, just, and equitable accounting from the United States under treaty stipulations and the laws of Congress.

Now therefore this agreement witnesseth: That for and in consideration of \$1, the receipt whereof is hereby duly acknowledged, and various other valuable services rendered and expenses incurred while acting under the instructions of the Delaware people, in making numerous trips to the city of Washington and other places in behalf of the Delaware people, we, George Bullette, of Tulsa, John Young and John Sarcoux, jr., of Bartlesville, Henry Armstrong, of Coodys Bluff, John Secondyne, of White Oak, all of the Indian Territory, being farmers and also occupied as the Delaware business committee, by virtue of authority in us invested, we do hereby contract and agree for and on behalf of the registered Delawares and the Delaware tribe and members thereof, severally and individually, as parties of the first part, with Richard C. Adams, of Fort Gibson, financial agent, and John Bullette, of Claremore, Ind. T., attorney at law, parties of the second part, as follows:

Witnesseth, That in pursuance of the authority in us vested by act herewith attached to this contract, entered into at Independence, Kans., on the 4th day of August, 1898, by said parties of the first part with said parties of the second part for the purpose and object, to wit:

First. Of prosecuting a suit in the Court of Claims on behalf of the Delawares against the Cherokee Nation to determine the rights of the registered Delawares in the communal funds and lands of the Cherokee Nation under the agreement of 1867 between the Delawares and the Cherokee.

Second. To determine the rights of the deceased registered Delawares and their heirs under the agreement of 1867 between the Delawares and the Cherokee.

Third. To represent the Delaware tribe of Indians in securing their allotments of land and in the distribution of their communal interest in the Cherokee funds under the agreement of 1867 between the Delawares and the Cherokee.

Fourth. To represent the Delaware Indians before the Executive Departments for the purpose of obtaining a general and final accounting between the United States Government and the Delawares on account of any balance due on invested funds in stocks and bonds for the Delawares on account of lands sold to the Government by the Delawares, or sold by the Government for the Delaware Indians under treaties of 1818, 1829, 1854, 1860, 1861, and 1866, and other treaties and laws.

Fifth. To recover from the United States pay for the land sold by the Delawares to the Wyandot Indians under agreement of 1848, and for four sections of land in the State of Kansas, sold to the Christian Indians under the treaty of 1854, and for land known as the Diamond Island, in the Missouri River, containing 430 acres, more or less, which has not been satisfactorily accounted for; and further to recover the rights of the Delawares in the Carondalet grant, referred to in the treaty of 1832.

Sixth. To recover for the Delawares their reversionary interest in the leased lands on the Delaware River from those in possession or those who are liable therefor to Delaware tribe.

It is hereby understood and agreed that any and all lands and moneys recovered by and through the efforts of the said parties of the second part, shall be paid to the Delaware Indians or placed to their credit after the compensation herein provided for has been paid to said parties of the second part.

It is further understood and agreed that for and in consideration of services to be rendered by said parties of the second part in representing the registered Delawares, in the matter of their claim for — interest in communal lands and funds of the Cherokee Nation, in suit in the Court of Claims under act of Congress approved June 28, 1898, the said parties of the first part for and on behalf of the registered Delaware Indians agree to pay to the said parties of the second part a retaining fee of 6½ per cent of the lands allotted to the said registered Delawares under the said act approved June 28, 1898, with the privilege to the said parties of the second part of selecting the aggregate amount of land herein provided for as a retainer, or, in lieu thereof, a fee equal to 6½ per cent of the value of the land so allotted to the said registered Delawares.

It is further understood and agreed that said parties of the second part shall receive a fee of 18¾ per cent of such lands as may be recovered or secured to the deceased registered Delaware Indians or their heirs, with the right of selection of the same (or a fee equal to 18¾ per cent of the value of said land).

It is further understood that said parties of the second part shall have a fee of 10 per cent of any money or other securities recovered from the United States growing out of the stipulations under treaties of 1818, 1829, 1832, 1848, 1854, 1860, 1861, and 1866, or other treaties or laws.

It is further agreed that said parties of the second part shall be paid a fee of 10 per cent of any moneys recovered from the Cherokee Nation which may have been wrongfully and unlawfully appropriated from the Cherokee national fund to the detriment of the per capita interest of each Delaware Indian.

It is further understood and agreed that said parties of the second part shall receive a fee of 10 per cent for any lands or funds recovered from individuals occupying lands which belong to the Delaware Indians, or in which they may have a reversionary interest.

We further agree to take such further action as may be necessary and proper to make effective the agreement, and we authorize the said Richard C. Adams and John Bullette, or their legal representatives, to act and do for us in our name and on our behalf all such acts as may be necessary and proper in the premises.

This contract shall be in force for a period of six years from the date of its approval by the Secretary of the Interior, with the right of renewal, and for the purpose of enabling our said attorneys to secure proper assistance and to procure the means to prosecute our claims, this contract shall be negotiable in whole or in part by our said attorneys, Richard C. Adams and John Bullette, and is declared to be coupled with an interest, and is irrevocable.

In witness whereof we hereunto attach our hands and seals on this 4th day of August, 1898.

GEORGE BULLETTE,  
JOHN (his x mark) YOUNG,  
HENRY ARMSTRONG,  
JOHN H. SECONDYNE,  
JOHN SARCOXIE, Jr., and  
RICHARD C. ADAMS,  
JOHN BULLETTE,  
*Attorneys in Fact.*

Witnesses to mark:

C. H. HOGAN,  
WM. JOHNSTON.

I, H. D. Terrell, judge of probate court, being a court of record, do certify that such contract was made and executed in my presence at Independence, Kans., on the 4th day of August, 1898, by George Bullette of Tulsa, Ind. T.; John Young, Bartlesville, Ind. T.; John Sarcoxie, jr., Bartlesville, Ind. T.; Henry Armstrong, Coodys Bluff, Ind. T.; John Secondyne, Whiteoak, Ind. T.; business committee Delaware tribe, and by John Bullette, party of the second part, under the authority of the act of the Delaware in general council assembled, as per copy herewith attached, being personally present and being presented by power of attorney hereto attached.

Witness my hand and seal, date and day above written.

[SEAL.]  
(Stamp, 10 cents.)  
(August 4, 1898.)

H. D. TERRELL,  
*Probate Judge Montgomery County, Kans.*

I, Jacob Klein, judge of the circuit court, being a court of record, do hereby certify that such contract was made and executed in my presence, at St. Louis, Mo., on the 6th day of September, 1898, by Richard C. Adams, of Fort Gibson, Ind. T., party of the second part, under authority of the act of the Delawares, in general council assembled, as per copy accompanying this contract.

Witness my hand and seal, day and date above written.

(Stamp, 10 cents.)  
(September 6, 1898.)

JACOB KLEIN, [SEAL.]  
*Judge of the Circuit Court, City of St. Louis, Mo.*

Attest to the seal of court:

[SEAL.]

THOS. B. ROGERS,  
*Clerk of the Circuit Court, City of St. Louis, State of Missouri.*

#### EXHIBIT 12.

AN ACT authorizing the employment of necessary counsel to bring suit in the United States Court of Claims under the provisions of the act of Congress approved June 28, 1898, and for other purposes.

*Be it enacted by the Delawares in general council assembled:* That George Bullette, of Tulsa, John Young and John Sarcoxie, jr., of Bartlesville, Henry Armstrong, of Coodys Bluff, and John Secondyne, of Whiteoak, all of the Indian Territory (whose occupation has been hitherto that of members of the Delaware business committee), are hereby appointed and elected to employ and retain, and to enter into contracts with Richard C. Adams, of Fort Gibson, Ind. T., and John Bullette, of Claremore, Ind. T., to institute and prosecute to final determination in the United States Court of Claims and the Supreme Court of the United States, as provided in the act of Congress approved June 28, 1898, and to represent the Delaware Indians before the



various Departments of the United States, committees of Congress of the United States, before the Dawes Commission, or before any other tribunal, agent, or commission of the United States Government where the interests of the Delaware people are involved, and to authorize said attorneys to employ such counsel, aid, or assistance as in their judgment may be necessary, and to negotiate an interest in the fee herein provided for.

That said Richard C. Adams and John Bullette shall diligently prosecute the claims of the Delaware Indians, more specifically set out in the following items:

Item 1. All the rights of the Delaware Indians under the agreement entered into between the Delaware Indians and the Cherokee Nation, dated April 8, 1867, involving—

(a) The segregation and allotment of the lands of the registered Delawares under said agreement.

(b) The determination and allotment of the rights of the heirs of the deceased registered Delawares under said agreement.

(c) The allotment to all of the Delawares of their share in the residue of the Cherokee national lands.

(d) The distribution to all of the Delawares of their share of the Cherokee national fund.

Item 2. The claim of the Delaware Indians for any balances due on account of funds invested for the Delawares by the United States Government in stocks and bonds which have not been fully accounted for to the satisfaction of the Delawares.

Item 3. The claim of the Delaware Indians for balances which may be due them from the United States in a final and full accounting for lands sold to the Government by the Delawares, or sold by the Government for the Delawares under the treaties of 1818, 1829, 1832, 1860, 1861, and 1866, or any other treaties or laws which will be more specifically set out upon filing the claim.

Item 4. Claim of the Delawares for certain land sold by the Delawares in the State of Kansas to the Wyandot Indians under agreement of 1848, involving about thirty-six sections of land, more or less.

Item 5. Claim for certain lands leased by the Delaware Indians on the Delaware River, during the Colonial period, which land the Delaware Indians never conveyed.

Item 6. Claim for pay for four sections of land in the State of Kansas, sold to the Christian Indians under treaty of 1854, at \$2.50 per acre, amounting to \$6,400.

Item 7. The claim for the land known as the Diamond Island, in the Missouri River, containing 430 acres, more or less, for which, under the treaty of 1866, the Delawares should have received \$2.50 per acre.

Item 8. Claim of the Delawares for their interest together with the Shawnees in the Carondelet grant, lying between the river St. Coure and Cape Girardeau, in the State of Missouri, under date of January 4, 1793, and referred to in the treaties with the Delawares and Shawnees of 1832.

The persons appointed and elected under this act to employ attorneys and to enter into contract with said Richard C. Adams and John Bullette shall contract for their compensation for their services heretofore rendered and to be rendered, and for reimbursement for money already expended in this behalf, as follows:

1. A fee of 6½ per cent of the lands allotted to the registered under the agreement of April 8, 1867, with the right to select and locate the same, or a fee equal to 6½ per cent of the value thereof, as a retainer in representing said registered Delawares in the matter of their communal interest in lands and funds of the Cherokee Nation which are involved in the suit authorized by act of Congress approved June 28, 1898.

2. A fee of 18¾ per cent of such lands as may be recovered under the rights of the deceased registered Delawares or their heirs under the agreement of April 8, 1867, which rights are involved in the suit authorized by act of Congress approved June 28, 1898, with the privilege of selecting and locating the same, or a fee equal to 18¾ per cent of the value thereof.

3. A fee of 10 per cent for such money as may be recovered to the Delaware Indians from the Cherokee Nation over and above the \$121,824 originally paid by the said Delawares into the Cherokee national fund for a communal interest in the lands and funds of the Cherokee Nation.

4. A fee not to exceed 35 per cent for all lands and money recovered from the United States or individual citizens thereof under any of the treaties and laws of the United States referred to hereinbefore.

*Provided,* That the said George Bullette, John Young, John Sarcoux, jr., Henry Armstrong, and John Secordyne, shall estimate the amount of land due under the

foregoing provisions to the said Richard C. Adams and John Bullette, and shall execute such papers for and on behalf of the registered Delawares and for and on behalf of the Delaware Indians, general and individual, as will secure to said Adams and Bullette their fees as herein provided.

This act shall take effect and be in force from the date of its passage.

I hereby certify that the foregoing act was passed by the Delaware council of the Delaware Indians, in general council assembled, at Bartlesville, Cherokee Nation, Indian Territory, this 29th day of July, A. D. 1898.

COLONEL (his X mark) JACKSON,  
*President of the Council.*

Witnesses to mark:  
J. W. McCracken,  
Wm. Johnston.

Attest:

F. M. OVERLESS,  
*Secretary of the Council.*

Upon satisfactory evidence that the council was held as indicated in the foregoing act, representing the wishes of the Delawares individually and as a tribe, I hereby approve the same.

\_\_\_\_\_  
*United States Indian Agent, Union Agency.*

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UNITED STATES INDIAN SERVICE,  
*Union Agency, Muskogee, Ind. T., August 12, 1898.*

Whereas, under section 25 of the act for the protection of the people of the Indian Territory and for other purposes, the Delaware Indians residing in the Cherokee Nation are authorized and empowered to bring suit in the Court of Claims in the United States within sixty days after the passage of said act, against the Cherokee Nation for the purpose of determining the rights of said Delaware Indians in and to the lands and funds of said nation, under their contract and agreement with the Cherokee Nation, dated April 8, 1867; and

Whereas on the 29th day of July, 1898, the Delawares, in general council assembled, appointed and elected George Bullette, of Tulsa; John Young and John Sarcocie, jr., of Bartlesville; Henry Armstrong, of Coodys Bluff, and John Secondyne, of White Oak, all of the Indian Territory, who were then and at that time the business committee of said Delaware Indians, to employ and retain Richard C. Adams, of Fort Gibson, and John Bullette, of Claremore, both of the Indian Territory, to institute and prosecute to a final determination in the United States Court of Claims and the Supreme Court of the United States said suit as provided in the act of Congress approved June 28, 1898, and also to represent the Delaware Indians before the various departments of the United States, committees of Congress, before the Dawes Commission, or any other tribunal.

Now, therefore, the action of said council having been submitted to me for approval, I hereby approve the same, subject to the approval of the Interior Department, with this modification or explanation: That I do not assume by such approval to ratify or approve the rate of fees fixed by said council through said business committee, because I am not sufficiently advised as to the amount of labor to be done by the said council or attorneys, and therefore leave the regulation of the fees to the Department, with this statement, however, that the business committee herein mentioned is a representative one of the Delaware Indians, and is capable of making a contract.

Very respectfully,

DEW. M. WISDOM,  
*United States Indian Agent.*

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EXHIBIT 13.

INDIAN TERRITORY, *October 11, 1898.*

We, the undersigned Delaware Indians, residing in the Cherokee Nation, being the survivors of the Delaware Indians whose names appear upon the register of Delaware Indians made in February, 1867, by John G. Pratt, the United States Indian agent for the Delaware Indians, and on file in the Department of the Interior of the United States, and known as the "Delaware Register," and the next of kin and heirs

at law of such registered Delaware Indians who have since deceased, do hereby certify:

1. Whereas in and by certain agreement made the 8th day of April, 1867, between the Cherokee Nation and the Delaware tribe of Indians, the Cherokee, parties of the first part, for and in consideration of certain payments and the fulfillment of certain conditions therein mentioned, among other things, agreed:

“To sell to the Delawares, for their occupancy, a quantity of land east of the line of 96° west longitude, in the aggregate equal to 160 acres for each individual of the Delaware tribe who has been enrolled upon a certain register made February 18, 1867, by the Delaware agent, and on file in the Office of Indian Affairs, being the list of Delawares who elect to remove to the Indian country, to which list may be added only with the consent of the Delaware council the names of such other Delawares as may, within one month after the signing of this agreement, desire to be added thereto. And the selections of the lands to be purchased by the Delawares may be made by the said Delawares in any part of the said Cherokee Reservation east of the line of 96° not already selected and in possession of other parties.”

And whereas the said Delawares made the said payments and fulfilled all of said conditions;

And whereas the number of said Delawares enrolled upon the said register being the list of Delawares who elected to remove to the Indian country, including the names of other Delawares added with the consent of the Delaware council within one month after the signing of said agreement, of those desiring to be added thereto, as provided by said agreement, was 985, making the number of acres sold by the Cherokees and to be selected by the Delawares as aforesaid, 157,600.

Now, therefore, we, Delaware Indians as aforesaid, do hereby certify that the selections of land made by the said registered Delaware Indians, and the heirs of such as died before selections were made, are as herein appears and is set forth.

2. Whereas, by the twenty-fifth section of the act of Congress approved June 28, 1898, entitled “An act for the protection of the people of the Indian Territory, and for other purposes,” it was provided:

“Before any allotments shall be made of lands in the Cherokee Nation there shall be segregated therefrom, by the Commission heretofore mentioned, in separate allotments, or otherwise, one hundred and fifty-seven thousand six hundred acres purchased by the Delaware Tribe of Indians from the Cherokee Nation under agreement of April 8, 1867.”

Now, therefore, the said Delaware Indians respectfully request that the 157,600 acres of land selected by the said Delawares as aforesaid, and herein described and set forth, be segregated from the other lands in the Cherokee Nation, in pursuance of provisions of the said section of the said act.

3. Whereas, by an agreement dated August 4, 1898, and duly acknowledged on the said date before a court of record, said agreement being in confirmation of previous agreements of the same nature and of other like agreements with individual Delawares, Richard C. Adams and John Bullette are made, constituted, and appointed the true and lawful attorneys of the said Delawares, and of each of them, irrevocable, for the purposes therein mentioned, including the purpose of representing the said Delawares in any and all controversies with the said Cherokees over their respective rights, and of bringing to a determination all questions which were or might be in controversy concerning said rights;

And whereas the said Richard C. Adams and John Bullette, under and by virtue of said agreements, and as compensation for the services rendered and to be rendered by them under and under the authority of the said agreements, are entitled, among other things, for themselves and their assigns, to 25,640 acres of said 157,600 acres of land, as well as to an equal proportion of the lands to which the said Delawares may be entitled in addition to said 157,600 acres by virtue of their communal rights or rights as citizens of the said Cherokee Nation;

Now, therefore, we, the said Delaware Indians, do hereby further ratify and confirm the said agreements with said Richard C. Adams and John Bullette, and we do hereby certify that the said Richard C. Adams and John Bullette have full power and authority on our behalf, and on behalf of all of said Delaware Indians, to act for and represent us in all matters of controversy between the said Delawares and the said Cherokees, and in all matters relating to the said lands, as well the lands to which we may be entitled by virtue of our communal right, or rights as citizens of the Cherokee Nation, as the said 157,600 acres of land purchased by the said Delawares as aforesaid, and in all matters relating to the selection of said lands, or the establishing of the title of the said Delawares thereto, and in all matters relating to the recovery of our share, and the share of the said Delaware Indians, in and to the communal funds of the said Cherokee Nation, and in all matters relating to the

claim or claims of the said Delaware Indians against the United States Government; and that as to any and all of such matters, and as to any and all other matters mentioned or referred to in the said agreements with said Richard C. Adams and John Bullette, the said Richard C. Adams and John Bullette have as full power and authority in the premises, on our behalf, and on behalf of the said Delawares, as we, or the said Delawares, might or would have if we were personally present and acting for ourselves, and that the said power and authority so granted to and conferred upon the said Richard C. Adams and John Bullette, as aforesaid, is coupled with an interest and irrevocable.

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EXHIBIT 14.

NOVEMBER 4, 1899.

ACTING CHAIRMAN OF THE COMMISSION TO THE FIVE CIVILIZED TRIBES,

*Muskogee, Ind. T.*

SIR: On August 23, 1898, Messrs. Logan, Demond, and Harby addressed a communication to the Department, in which a quotation is made from section 25 of the act of Congress approved June 28, 1898 (30 Stat., 495), as follows:

"That before any allotment shall be made of lands in the Cherokee Nation there shall be segregated therefrom by the Commission heretofore mentioned, in separate allotments or otherwise, the one hundred and fifty-seven thousand six hundred acres purchased by the Delaware tribe of Indians from the Cherokee Nation under agreement of April eighth, eighteen hundred and sixty-seven."

It is also stated that the agreement referred to provides as follows:

"The selections of the lands to be purchased by the Delawares may be made by said Delawares in any part of the Cherokee Reservation east of said line 96 degrees not already selected and in possession of other parties."

Said attorneys further state that "the Delawares have made their selection of the 157,600 acres purchased by them and are now in possession of the same," and they request that the Department shall instruct your Commission "to survey and segregate in some proper and formal manner the 157,600 acres which the Delawares so selected and of which they are now in possession."

They further state that they desire this to be done as early as possible, for the reason that they think it necessary that the survey and segregation mentioned in said act should precede the trial and judgment in the suit that they have recently brought against the Cherokee Nation under the provisions of said section.

You are requested to advise the Department what action, in your judgment, should be taken with reference to said provision, when it is practicable to make said segregation, and any recommendation relative thereto which in your judgment seems best.

Respectfully,

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*Acting Secretary.*

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EXHIBIT 15.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,

*Washington, November 20, 1899.*

THE SECRETARY OF THE INTERIOR.

SIR: Referring to Department letter of November 4, 1899, addressed to the chairman of the Dawes Commission, requesting said Commission to advise the Department what action, in their judgment, should be taken relative to the segregation of the 157,600 acres of land "purchased by the Delaware Indians from the Cherokee Nation," there is transmitted herewith a report, dated November 13, 1899, from the acting chairman of said Commission, in which it is stated that the Commission is required to make rolls of citizenship of the Cherokee Indians; that such rolls will, of course, include the Delawares; that before such rolls can become final they must be approved by the Secretary of the Interior; that until such rolls are completed it can not be determined who are Cherokee citizens, nor can it be known what Delaware Indians are Cherokee citizens and entitled to participate in the benefits of the distribution of the property acquired under the contract between the Delawares and Cherokees; that the provision of the Curtis Act relative thereto makes it obligatory upon the Department to segregate said land "before any allotment shall be made of lands in the Cherokee nation;" that no allotment of Cherokee lands can be made until a roll of citizenship of said nation has been made and approved; that the

Commission will not be able to make such rolls until during the year 1900; that when such rolls have been made the Government will be prepared to begin the allotment of Cherokee lands, and also to segregate the lands alleged to have been purchased by the Delawares under their agreement with the Cherokees; and that not until said rolls have been so made and approved can the segregation of said lands be accomplished.

As it is presumed that the Department is desirous of obtaining the views of the Dawes Commission relative to this matter, the said report is submitted without any discussion thereof by this office.

Very respectfully, your obedient servant,

W. A. JONES, *Commissioner*.

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EXHIBIT 16.

NOVEMBER 22, 1899.

The ACTING CHAIRMAN OF THE COMMISSION TO THE FIVE CIVILIZED TRIBES,

*Muskogee, Ind. T.*

SIR: The Department is in receipt of your communication of the 13th instant, referring to departmental letter of the 4th instant, relative to the segregation of the 157,600 acres referred to in section 25 of the act of Congress approved June 28, 1898 (30 Stat. L., 495), and stating that no allotment of the Cherokee lands can be made until the rolls of the Cherokee Nation shall have been completed and approved.

The views expressed in your said communication are satisfactory to the Department, and you are so advised.

Respectfully,

WEBSTER DAVIS, *Acting Secretary*.

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EXHIBIT 17.

FEBRUARY 27, 1901.

The SECRETARY OF THE INTERIOR,

*Washington, D. C.*

SIR: Inclosed in separate cover three maps, showing the location of the 157,600 acres of land selected and in possession of the Delaware Indians, and which we wish to have segregated by the Dawes Commission as provided by the twenty-fifth section of the act of Congress known as the Curtis bill and the Cherokee agreement.

Please forward one copy of these maps to the Dawes Commission for their use and reference. These maps are true copies of the one on file with the Court of Claims. If you need other copies, I can furnish them to you.

I am, yours, respectfully,

RICHARD C. ADAMS,  
*Representing the Delaware Indians.*

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EXHIBIT 18.

COMMISSION TO THE FIVE CIVILIZED TRIBES.

*Muskogee, Ind. T., March 23, 1901.*

The SECRETARY OF THE INTERIOR.

SIR: I have the honor to acknowledge receipt by Departmental reference of March 24 of a letter from Richard C. Adams, dated February 27, together with a map of the Cherokee Nation, showing by coloration the lands which said Adams represents to be now in the possession of Delaware Indians, and which they wish to have segregated by this Commission, as provided by section 25 of the act of Congress June 28, 1898, and the pending Cherokee agreement.

In response to the Department's request for a report and recommendation in the premises, I have to state that the Commission is not advised whether said Richard C. Adams is authorized to represent the Delawares in the matter of segregating their lands, and whether, therefore, the lands designated are the lands desired by the Delawares or not. Granting that he is the duly accredited representative of the Delaware Indians, the Commission should in due time be furnished with a list of the lands which it is desired to have segregated, described by legal subdivisions.

Section 25 of the act of Congress referred to provides as follows:

"That before any allotment shall be made of lands in the Cherokee Nation there shall be segregated therefrom by the Commission heretofore mentioned, in separate

allotments or otherwise, the one hundred and fifty-seven thousand six hundred acres purchased by the Delaware tribe of Indians from the Cherokee Nation under agreement of April eighth, eighteen hundred and sixty-seven, subject to the judicial determination of the rights of said descendants and the Cherokee Nation under said agreement; that the Delaware Indians residing in the Cherokee Nation are hereby authorized and empowered to bring suit in the Court of Claims of the United States within sixty days after the passage of this act, against the Cherokee Nation, for the purpose of determining the rights of said Delaware Indians in and to the lands and funds of said nation under their contract and agreement with the Cherokee Nation dated April eighth, eighteen hundred and sixty-seven, and jurisdiction is conferred on said court to adjudicate and fully determine the same, with right of appeal to either party to the Supreme Court of the United States."

The Commission is not yet ready to allot the lands of the Cherokees and will not begin making allotments, in all probability, until the roll of Cherokee citizens shall have been completed or legislation be enacted other than that which now governs allotment in the Cherokee Nation. It is therefore not essential that the Commission segregate the lands at this time in order to fulfill the requirements of the statute with respect to segregating the lands prior to allotment. The indications are that considerable time will yet elapse before the Commission will be in readiness to allot the lands of the Cherokees.

Furthermore, under the provisions of the act above quoted, the lands claimed by the Delawares are to be segregated "subject to a judicial determination of the rights of said descendants and the Cherokee Nation under said agreement." A judicial determination of the rights of the parties in interest has thus far not been reached by the Court of Claims, wherein suit was instituted, and a recognition of the Delawares' claim to 157,600 acres should not, therefore, precede such determination.

Inasmuch as the lands of the Cherokees have been surveyed, a mere segregation of the land claimed would involve no act on the part of the Commission other than to withhold the same from general allotment, and should allotment in the Cherokee Nation therefore be reached while the suit is yet pending the Commission may, in its opinion, properly reserve the 157,600 acres pending a decision by the Court of Claims, provided that an accurate and authentic description of the lands claimed by the Delawares be furnished it.

Very respectfully,

TAMM BIXBY,  
*Acting Chairman.*

(Through the Commissioner of Indian Affairs.)

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#### EXHIBIT 19.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
*Washington, April 3, 1901.*

THE SECRETARY OF THE INTERIOR.

SIR: I have the honor to transmit herewith a report made on March 23, 1901, by the Commission to the Five Civilized Tribes, acknowledging receipt, by departmental reference of March 2, 1901, of a letter from Richard C. Adams, dated February 27, with a map of the Cherokee Nation, showing by coloration the lands which Mr. Adams represented to be now in the possession of Delaware Indians and which they wish to have segregated by the Commission as provided by section 25 of the act of Congress of June 28, 1898.

The Commission quotes section 25 of the act of Congress above referred to, which is as follows:

"SEC. 25. That before any allotment shall be made of lands in the Cherokee Nation there shall be segregated therefrom by the Commission heretofore mentioned, in separate allotments or otherwise, the one hundred and fifty-seven thousand six hundred acres purchased by the Delaware tribe of Indians from the Cherokee Nation under agreement of April eighth, eighteen hundred and sixty-seven, subject to the judicial determination of the rights of said descendants and the Cherokee Nation under said agreement. That the Delaware Indians residing in the Cherokee Nation are hereby authorized and empowered to bring suit in the Court of Claims of the United States, within sixty days after the passage of this act, against the Cherokee Nation, for the purpose of determining the rights of said Delaware Indians in and to the lands and funds of said nation under their contract and agreement with the Cherokee Nation dated April eighth, eighteen hundred and sixty-seven; or the Cherokee Nation may bring a like suit against said Delaware Indians; and jurisdic-

tion is conferred on said court to adjudicate and fully determine the same, with right of appeal to either party to the Supreme Court of the United States." and states that it is not ready to allot the lands of the Cherokee and will not begin making the allotments in all probability until the roll of the Cherokee shall have been completed, or until legislation is enacted other than that which now governs allotments in the Cherokee Nation; that it is therefore not essential that the lands in the possession of the Delawares be segregated at this time; and that the indications are that considerable time will elapse before the Commission will be in readiness to allot the lands of the Cherokee.

The Commission stated that under the provisions of the act above quoted, the lands claimed by the Delawares are to be segregated, subject to a judicial determination of the rights of said descendants and the Cherokee Nation under said agreement; that a judicial determination of the rights of the parties in interest has thus far not been reached by the Court of Claims wherein suit was instituted; that a recognition of the Delawares' claim to 157,600 acres should not therefore precede such determination; that the lands of the Cherokee have been surveyed and a mere segregation of the land claimed by the Delawares would involve no act on the part of the Commission other than that of withholding the same from general allotment; and that should allotment in the Cherokee Nation be reached while suit is yet pending the Commission may, in its opinion, properly reserve 157,600 acres pending a decision of the Court of Claims, provided that an accurate and authentic description of the land claimed by the Delawares is furnished to it.

Congress has directed that 157,600 acres of the Cherokee lands be segregated before any allotments are made to citizens of that nation. The Department and the Commission have nothing to do with the effect which such segregation may have on the final determination of the suit authorized by Congress, and, indeed, it is not understood that the compliance by the Commission with the statutory direction would in anywise prejudice the rights of either party in interest.

This office has no means of ascertaining the necessity, if any there be, of segregating the said Delaware lands at this time. Neither does it understand that any necessity exists for such action. So far as is known, the Delawares are occupying the lands claimed by them without restriction or objection on the part of the Cherokee, and unless some good reason be shown to the contrary, the Commission should be allowed to exercise its sound discretion as to the time when the segregation contemplated should be made, it being understood, of course, that no allotments will be made to the Cherokee prior to the segregation of the Delaware lands. It is respectfully recommended that Mr. Adams and the Commission be advised as above indicated, and attention is respectfully invited to office report of November 20, 1899, which transmitted without discussion a report made by the said Commission on November 13, 1899, relative to the same subject-matter.

Very respectfully, your obedient servant,

W. A. JONES, *Commissioner.*

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EXHIBIT 20.

APRIL 8, 1901.

THE COMMISSION TO THE FIVE CIVILIZED TRIBES,  
*Muscogee, Ind. T.*

GENTLEMEN: The Department is in receipt of your communication of March 23, 1901, reporting upon a letter from Richard C. Adams, dated February 27, 1901, relative to the segregation of 157,600 acres of Delaware lands in the Cherokee Nation.

The Commissioner of Indian Affairs forwarded your report April 3, and concurred in your recommendations.

The Department has this day advised Mr. Adams of its approval of your views on the premises.

Respectfully,

THOS. RYAN, *Acting Secretary.*

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EXHIBIT 21.

DEPARTMENT OF THE INTERIOR,  
*Washington, April 8, 1901.*

MR. RICHARD C. ADAMS,  
*Kellogg Building, Washington, D. C.*

SIR: The Department is in receipt of a report from the Commission to the Five Civilized Tribes upon your letter dated February 27, transmitting a map of the Cherokee Nation showing by coloration the lands which you represent to be now in

possession of Delaware Indians, and which they desire to have segregated by the Commission, as provided by section 25 of the act of Congress approved June 28, 1898. (30 Stat. L., 495.)

The Commission quotes section 25 of said act, and states that it is not yet ready to allot the lands of the Cherokee, and will not begin making allotments in all probability until the roll of Cherokee citizens shall have been completed or legislation be enacted other than that which now governs allotments in the Cherokee Nation; that it is not essential that the Commission segregate the lands at this time in order to fulfill the requirements of the statute with respect to segregating the lands prior to allotment, and that the indications are that considerable time will yet elapse before the Commission will be in readiness to allot the lands of the Cherokee.

The Commission further reports that since the lands of the Cherokee Nation have been surveyed, any segregation of the lands claimed would involve no act on the part of the Commission other than to withhold the same from general allotment; and should the Commission be ready to allot the lands in the Cherokee Nation while the suit is pending between said nation and the Delawares, it could properly reserve the 157,600 acres, pending a final decision of said suit, "provided that an accurate and authentic description of the lands claimed by the Delawares be furnished it."

The Commissioner of Indian Affairs forwarded said report on April 3, 1901, and recommends that you be advised that "the Commission should be allowed to exercise its sound discretion as to the time when the segregation contemplated should be made, it being understood, of course, that no allotments will be made to the Cherokee prior to the segregation of the Delaware lands."

The Department concurs in the views expressed by the Commission and the Commissioner of Indian Affairs, and incloses herewith a copy of the report of the Commissioner for your information.

Respectfully,

THOS. RYAN, *Acting Secretary.*

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EXHIBIT 22.

COMMISSION TO THE FIVE CIVILIZED TRIBES,  
*Muscogee, Ind. T., September 25, 1902.*

Notice is hereby given that the Commission to the Five Civilized Tribes, will on January 1, 1903, at Vinita, Ind. T., establish an office for the allotment of the lands of the Cherokee Nation to the citizens of that tribe, in accordance with the provisions of the act of Congress approved July 1, 1902, entitled "An act to provide for the allotment of the lands of the Cherokee Nation, for the disposition of town sites therein, and for other purposes."

Such office will be maintained at Vinita until April 30, 1903.

Beginning May 4, 1903, the Commission to the Five Civilized Tribes will establish an office at Tahlequah, Ind. T., for the allotment of the lands of the Cherokee Nation to the citizens of that tribe in accordance with the act of Congress above referred to, such office to be continued indefinitely.

TAMS BIXBY, *Acting Chairman,*  
T. B. NEEDLES, *Commissioner,*  
C. R. BRECKENRIDGE, *Commissioner,*  
*Commission to the Five Civilized Tribes.*

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EXHIBIT 23.

COMMISSION TO THE FIVE CIVILIZED TRIBES,  
*Muscogee, Ind. T., September 27, 1902.*

RICHARD C. ADAMS,  
*Bowl Building, Washington, D. C.*

DEAR SIR: The Commission is in receipt of your letter of September 23, requesting a copy of the Delaware roll of citizens of the Cherokee Nation, as prepared by this Commission.

In reply, you are advised that the roll being prepared by this Commission, of the Delaware citizens of the Cherokee Nation, has not been completed, and it is therefore impossible to comply with your request.

Respectfully,

TAMS BIXBY, *Acting Chairman.*



## EXHIBIT 24.

COMMISSION TO THE FIVE CIVILIZED TRIBES,  
*Muscogee, Ind. T., October 8, 1902.*

RICHARD C. ADAMS,  
*Band Building, Washington, D. C.*

DEAR SIR: The Commission is in receipt of your letter of the 30th ultimo, requesting list of those Delaware Indians against whose enrollment no contest or objection has been entered, or in lieu thereof, that you be furnished with the three books you supplied the Commission, the Delaware pay roll, and the certified copy of the Delaware register.

In reply, you are advised that Mr. Green, of the Commission, will meet you at Dewey, Ind. T., on the 15th of October, with the books requested, as it will be impossible for the Commission to furnish you with the list of those Delawares against whose enrollment no contest or objection has been entered.

Respectfully,

TAMS BIXBY, *Acting Chairman.*

## EXHIBIT 25.

*Minutes of the council of the Delaware Indians residing in the Cherokee Nation, held at Dewey, in said nation, on the 15th day of October, 1902, pursuant to a notice duly given in accordance with the customs of the tribe, and also published for two weeks in the Dewey Globe newspaper, a newspaper in general circulation in said nation.*

More than a majority of the adult members of said band of Delaware Indians, having met pursuant to said notice, the meeting was called to order by John Young, who stated the object of the meeting. Colonel Jackson, being nominated for chairman, and a vote being taken, he was declared elected. I. N. Journeycake, being nominated for secretary, a vote was taken and he was declared duly elected. The meeting then proceeded to the transaction of the business for which it had been called, and addresses were made by James Wilson, John Young, and Richard C. Adams, and interpreted by John Willey.

The following resolution was then presented by John Young, who moved its adoption. The motion being seconded by George Bullette, and a vote being taken, the resolution was unanimously adopted.

COL. JACKSON (his x mark).  
I. N. JOURNEYCAKE, *Secretary.*

Witness to mark—

JOHN R. WILLEY.  
H. M. ADAMS.

Whereas by virtue of the agreement of April 8, 1867, between the Delaware tribe of Indians and the Cherokee Nation, the Delawares became lawfully possessed of certain rights, privileges, and benefits, which said Cherokee have for a long time neglected and refused to recognize, and which the Government of the United States has failed to secure and protect, as it was in duty bound to do under the provisions and guarantees of the treaties between the United States and the Delaware Nation of July, 1866, and the United States and the Cherokee Nation of July, 1866, and particularly the fourth and fifth articles of the former and the fifteenth article of the latter, under the authority and provisions of which the Delawares entered into their said agreement with the Cherokee Nation of 1867; and

Whereas by reason of said neglect and refusal of the Cherokee Nation to recognize the just and lawful rights of said Delawares, and the neglect of the United States Government to maintain and safeguard such rights as it had guaranteed to do as aforesaid, it became necessary for the Delaware Indians to take such action in their own behalf as would, so far as lay in their power, maintain and protect their said rights and interests; and

Whereas to that end the authorities of the Delaware tribe, reposing great faith and confidence in the ability and integrity of Richard C. Adams and John Bullette, granted to them such provisional powers and authority as they then possessed to at once take up their cause, secure the assistance of such counsel as they might deem advisable, and to do and perform all things that in their judgment were, for the time being, requisite in order to protect such rights and interests, providing and agreeing

that thereafter a formal and proper provision should be made for the payment of just and satisfactory compensation for such services; and

Whereas pursuant to such provisional authority, said Adams and Bullette at once proceeded to Washington and there made representations to Congress and to the various departments of the Government respecting the rights, claims, and just dues of said Delawares, and through their efforts secured the insertion in what is known as the Curtis Act, of the twenty-fifth section thereof, providing for the submission of the claims of the Delaware Indians to the Court of Claims for determination, and did at their own expense secure skilled and able counsel and cause to be instituted in said court a suit wherein the various claims of the Delaware Indians arising out of their contract with the Cherokee of 1867 are to be finally adjudicated, and did, by devoting their time, energy, and means thereto, compile a complete register of the Delaware Indians, including descriptions of the lands occupied and claimed by each under said agreement of 1867, and did at great expense provide for and cause to be taken all necessary testimony in said cause, and did provide for and cause the preparation of the record in said case, consisting of more than 480 printed pages (see record Delaware case, pp. 1 to 480, inclusive), and have by their energy, perseverance and skill, and at great outlay of money, prepared such case for hearing in said court at its approaching session; and

Whereas in contemplation and consideration of such services, and in order to provide means whereby such services already performed and the further services required to be performed in the premises on behalf of the Delaware people by said Adams and Bullette might be properly and lawfully secured to them, the Delaware people in general council duly assembled did on July 29, 1898, pass an act authorizing, empowering, and directing George Bullette, John Young, John Sarcoux, jr., Henry Armstrong, and John Secondyne, members of said Delaware tribe, and at the time constituting its business committee, to enter into a formal contract with said Adams and Bullette on behalf of the Delaware tribe of Indians, authorizing and empowering said Adams and Bullette to "institute and prosecute to final determination in the United States Court of Claims and the Supreme Court of the United States, as provided in the act of Congress approved June 28, 1898, and to represent the Delaware Indians before the various departments of the United States, committees of Congress of the United States, before the Dawes Commission, or before any tribunal, agent, or commission of the United States Government where the interests of the Delaware people are involved, and to authorize said attorneys to employ such counsel, aid, or assistance as in their judgment may be necessary, and to negotiate an interest in the fee herein provided for.

That said Richard C. Adams and John Bullette shall diligently prosecute the claims of the Delaware Indians, more specifically set out in the following items:

*Item 1.*—All the rights of the Delaware Indians under the agreement entered into between the Delaware Indians and the Cherokee Nation, dated April 8, 1867, involving—

"(a) The segregation and allotment of the lands of the registered Delawares under said agreement.

"(b) The determination and the allotment of the rights of the deceased registered Delawares under said agreement.

"(c) The allotment to all of the Delawares of their share of the residue of the Cherokee national lands.

"(d) The distribution to all of the Delawares of their share of the Cherokee national fund.

*Item 2.*—The claim of the Delaware Indians for any balances due on account of funds invested for the Delawares by the United States Government in stocks and bonds which have not been fully accounted for to the satisfaction of the Delawares.

*Item 3.*—The claim of the Delaware Indians for balances which may be due them from the United States in a final and full accounting for lands sold to the Government by the Delawares, or sold by the Government for the Delawares, under treaties of 1818, 1828, 1832, 1860, 1861, and 1866, or any other treaties or laws which will be more specifically set out upon filing the claim.

*Item 4.*—Claim of the Delawares for certain lands sold by the Delawares in the State of Kansas to the Wyandotte Indians under agreement of 1848, involving about 36 sections of land, more or less.

*Item 5.*—Claim for certain lands leased by the Delaware Indians on the Delaware River during the colonial period, which land the Delaware Indians never conveyed.

*Item 6.*—Claim for pay for 4 sections of land in the State of Kansas sold to the Christian Indians under the treaty of 1854, at \$2.50 per acre, amounting to \$6,400.

*Item 7.*—The claim for the land known as Diamond Island, in the Missouri River, containing 430 acres, more or less, for which, under the treaty of 1866, the Delawares should have received \$2.50 per acre.

"*Item 8.*—Claim of the Delawares for their interest, together with the Shawnees, in the Carondalet grant, lying between the River St. Conre and Cape Girardeau, in the State of Missouri, under date of January 4, 1793, and referred to in the treaties with the Delawares and Shawnees of 1832.

"The persons appointed and elected under this act to employ attorneys and to enter into contract with said Richard C. Adams and John Bullette, shall contract for their compensation for their services heretofore rendered and to be rendered, and for the reimbursement for money already expended in this behalf, as follows:

"1. A fee of 6½ per cent of the lands allotted to the registered Delawares under the agreement of April 8, 1867, with the right to select and locate the same, or a fee equal to 6½ per cent of the value thereof, as a retainer in representing said registered Delawares in the matter of their communal interest in lands and funds of the Cherokee Nation, which are involved in the suit authorized by act of Congress, approved June 28, 1898.

"2. A fee of 18¾ per cent of such lands as may be recovered under the rights of the deceased registered Delawares or their heirs under the agreement of April 8, 1867, which rights are involved in the suit authorized by act of Congress, approved June 28, 1898, with the privilege of selecting and locating the same, or a fee equal to 18¾ per cent of the value thereof.

"3. A fee of 10 per cent for such money as may be recovered by the Delaware Indians from the Cherokee Nation over and above the \$121,824.28 originally paid by the said Delawares into the Cherokee national fund for a communal interest in the lands and funds of the Cherokee Nation.

"4. A fee not to exceed 35 per cent for all lands and money recovered from the United States, or individual citizens thereof, under any of the treaties and laws of the United States, referred to hereinbefore.

"*Provided*, That the said George Bullette, John Young, John Sarcoxie, jr., Henry Armstrong, and John Secondyne shall estimate the amount of land due under the foregoing provisions to the said Richard C. Adams and John Bullette, and shall execute such papers for and on behalf of the registered Delawares, and for and on behalf of the Delaware Indians, general and individual, as will secure to said Adams and Bullette their fees, as herein provided."

Which said act of the Delaware council was approved by the United States agent for the Union Agency on the 12th day of August, 1898, and

Whereas on the 29th day of August, 1898, at Nowata, Ind. T., the business committee of the Delaware Indians did estimate the amount of lands due to the said Richard C. Adams and John Bullette, under the provisions of the contract entered into by and between the said Adams and Bullette and the Delaware business committee and the Delaware council, and did issue to the said Adams and Bullette a certificate, which in part reads as follows:

"It is hereby certified that after due consideration of the terms of said contract, dated August 4, 1898, that the amount of lands due from the registered Delawares as a retainer is 2,120 acres, and the amount due from the heirs or successors of the deceased registered Delawares, payable from the lands which would have been allotted to the deceased registered Delawares if they were living, is 23,480, aggregating 25,600."

Whereas pursuant to said authority and in conformity to the law in such cases provided, the persons mentioned in said act, being the business committee of the Delaware tribe, and acting for and on behalf of said tribe, did on the 4th day of August, 1898, enter into a certain contract with said Richard C. Adams and John Bullette, upon the terms and conditions as set out in the act of the Delaware council, already fully referred to herein; and

Whereas in order to more fully carry out the purposes and intentions of this people and to confirm to said Richard C. Adams and John Bullette all the rights and powers designed and intended to be conferred upon them, a further contract was entered into in October, 1898, essentially corresponding in all its terms to the said contract of August 4, 1898, and also confirming to said Adams and Bullette the compensation set out and referred to in said act of the Delaware council, which said contract of October, 1898, was executed in duplicate on behalf of the Delaware people by each of the registered Delawares then living, individually, and by the heirs or legal representatives of those who were dead (a copy of which said contract is now on file in the Court of Claims as a part of the record in the case of the Delaware Indians, etc., *v.* The Cherokee Nation); and

Whereas the Delaware people realize that without the services of the said Adams and Bullette they would have been unable to have maintained and protected their rights under the said agreement of 1867, and believing, as they do, that they have been honestly, faithfully, and ably represented, and that said Adams and Bullette

have done and performed every act and thing that was necessary and proper to be done in order to present, maintain, and defend the rights of these people, and it being their wish, as it has at all times been since the employment began, that the said Adams and Bullette should be recognized by the Government of the United States as the duly constituted representatives and attorneys in fact of these people in and about all of the matters, interests, and claims herein already referred to, and that they, the said Adams and Bullette, should receive full and fair compensation for their time, services, and advancements: Therefore, in further confirmation of all the rights and powers heretofore delegated to said Adams and Bullette, be it

*Resolved by the Delaware Indians in general council assembled,* That the acts of the representatives of these people in conferring upon said Adams and Bullette provisional powers of representation, and the acts of the business committee of this tribe in the execution of said contract of August 4, 1898, be, and the same are hereby, ratified and confirmed, and all of the acts of said Adams and Bullette done and performed on behalf of the Delaware Indians by virtue of such authority are hereby ratified and confirmed as fully to all intents and purposes as if their said acts had been done and performed by these people in general council assembled in their own behalf; that said provisional authority, the contract of August 4, 1898, and the contract of October 11, 1898, are hereby reaffirmed and ratified to the full extent of the powers of this council and of the Delaware people; that all the selections of lands made and set out in the exhibits attached to the testimony of Horace Adams, being a part of the record in the case of the Delaware Indians *v.* The Cherokee Nation in the Court of Claims, and being further referred to in said contract of October 11, 1898, are hereby declared to be our selections for the purposes therein contemplated and are hereby approved, ratified, and confirmed; that the selections of lands made by said Adams and Bullette as and for their part compensation for the services and advancements made by them, as herein already described, are hereby approved, ratified, and confirmed; that the acts of the said business committee of the Delaware Indians in estimating the lands due to the said Adams and Bullette as and for their part compensation for services in this behalf, and in issuing therefor their certificate dated the 29th day of August, 1898, be, and the same are hereby, ratified, approved, and confirmed, and the Government of the United States and all of its departments and officers, commissions, and commissioners appointed under authority of law are hereby requested to recognize the said contracts in their entirety and to give full faith and credit to said Adams and Bullette as the duly authorized and accredited agents and attorneys in fact of the Delaware tribe in all matters mentioned and described in any of said contracts and in and to the matters involved in said suit in the Court of Claims between the Delaware Indians and the Cherokee Nation.

*And be it further resolved,* That George Bullette, John Young, John Sarcoixie, jr., Henry Armstrong, and John Secondyne, constituting the Delaware business committee, be, and they are hereby, authorized, directed, and instructed to go before a judge of some court of record and there enter into a contract, in conformity with the United States Statutes in such cases provided, with Richard C. Adams and John Bullette to represent the Delaware Indians in connection with any claims that the Delawares may have against the United States arising under or in virtue of any unfulfilled treaty stipulations between the said Delaware Indians and the United States, and more particularly set out and described in Senate Document No. 349, Fifty-seventh Congress, first session, and the claims already herein set out, and cause suit to be instituted in the Court of Claims of the United States on behalf of the Delaware tribe, under the provisions of section 68 of the act of Congress approved July 1, 1902, entitled "An act to provide for the allotment of lands of the Cherokee Nation," etc. (Public—No. 241), and to grant unto said Richard C. Adams and John Bullette all the powers in the said behalf that the Delaware Indians would possess if acting for themselves. The said committee is hereby authorized to provide in such contract for compensation to be paid to said Richard C. Adams and John Bullette, not to exceed 35 per cent of all lands, moneys, or other thing or things of value that may be recovered for or on account of said Delaware Indians in any of the Departments of the United States Government or before Congress or any commission appointed thereby, or in any court of the United States where the rights of said Indians under said claims may be tried and adjudicated, and whether paid in money to said Delaware Indians, expended or invested for their benefit, and authorizing and directing the proper officers of the United States to deduct from any amount that may be recovered and pay to Richard C. Adams and John Bullette the amount which may be stipulated and provided in said agreement. The contract which the said business committee are herein authorized and directed to execute with the said Richard C. Adams and John Bullette is in no way to impair or abridge the contracts of August 4, 1898, and October 11, 1898, hereinbefore referred to, but it is to confirm and ratify these contracts and extend the time of their authority and their performance.

*And be it resolved further.* That a copy of these resolutions may be filed with the Commission to the Five Civilized Tribes and that a copy thereof be attached to each of the triplicate copies when executed.

COL. JACKSON (his X mark), *Chairman*.  
I. N. JOURNEYCAKE, *Secretary*.

Witnesses to mark:

JOHN H. SECONDYNE,  
JOHN R. WILLEY.

I, J. Blair Shoенfelt, United States Indian agent, Union Agency, Ind. T., certify that I was unable to be present at a meeting of the council of the Delaware Indians residing in the Cherokee Nation, held at Dewey, in said nation, on October 15, 1902, although requested to be present at said meeting of said council by Mr. Richard C. Adams.

I further certify that to the best of my knowledge and belief said meeting of said council of said Delaware tribe of Indians was actually held at Dewey on the 15th day of October, 1902, and that the attached papers represent and are a true report of the doings and resolutions of said council while in session on the date mentioned.

J. BLAIR SHOENFELT,  
*United States Indian Agent*.

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EXHIBIT 26.

OCTOBER 15, 1902.

*Resolved.* That the Delaware Indians in general council assembled desire to express to the Government of the United States their most earnest and vigorous protest against the allotment of the lands in the Cherokee Nation unless and until adequate and just provision shall be first made for the protection of the rights and claims of the Delaware Indians, as set out and particularly described in the petition filed in the Court of Claims in the case of the Delaware Indians *v.* The Cherokee Nation.

In doing this we wish to call attention to the fact that the Delawares sold their homes in Kansas and with the proceeds of said sale purchased lands and equal rights of citizenship in the Cherokee Nation, at the solicitation and request of the United States authorities and under its most solemn pledges of full and complete protection in all their personal and property rights; that they were enjoined to become industrious and thrifty, and to be an example of prosperity to their neighbors and surrounding people. In conformity with the long history of friend-ship of the Delawares for the whites and for the Government, they began at once earnestly and industriously the work of making farms and homes, and how well they have succeeded is a matter of history of the country. As long ago as 1890 the United States Indian agent, in a communication to the Department, referring to the subject, said:

"Among the Delawares nearly every farmer of any pretension has an orchard. Among them we find some of the best merchants, and there are mills of various kinds owned by them in the different settlements. Their houses are, for the most part, well built and substantial, and their fences, outhouses, and other improvements are well taken care of. No one who has visited the Delaware settlement could fail to note the fact that they are among the most thrifty and intelligent Indians in the entire Indian country."

When later, in 1891, the Government consented to capitalize and pay to the Delawares their invested funds a condition was coupled therewith that the funds so paid should be invested in improvements and stock, and in order to determine whether the Delawares were in good faith carrying out this provision, one-half of the fund only was distributed at the first payment—\$4———.

When the United States Indian agent was directed to report as to how much of said fund had been so used he found that their stock and improvements amounted to more than \$650,000 (see letter of Leo E. Bennett, United States Indian agent, of April 12, 1890, and schedules attached), whereupon the balance of said fund was distributed, and was in like manner and good faith expended in improvements on their lands and homes.

Thus it will be seen that the extensive improvements made by the Delawares have not only been fostered and encouraged by the Government and by the Department of the Interior, but that we have, in a measure, been compelled to expend these large sums in improving the lands occupied and claimed by us. A large part of these improvements are upon lands in excess of the 157,600 acres purchased by the Delawares from the Cherokee Nation under the agreement of 1867, and are upon lands due to us, as we claim, under and by virtue of our purchase of equal rights of citizenship in the Cherokee Nation. If our claim in this respect is just, as we believe it is,

and if it shall be sustained in the suit now pending and herein referred to, it would be manifestly unjust that these lands, which we have improved at great outlay of our personal means and at the request and even dictation of the United States, should not be so secured that in the final adjustment and allotment we may have the opportunity, as other citizens of the Cherokee Nation have, of selecting the lands upon which our improvements have been made.

We are not asking that the action of the courts may be anticipated in our favor. All that we request is that such action may not be anticipated to our detriment, and that our improved lands so claimed by us may be either provisionally allotted to us or that the same may be reserved from selection and allotment by others until such time as the courts to which this question has been referred for final adjudication shall have passed upon the question of our rights thereto.

The suggestion here made is one that looks only to justice to all parties, and can in no way work a wrong to any. To deny this request would result in irremediable hardship, loss, and wrong, without necessity, and, as we would be constrained to feel, wantonly, upon a people who never committed an overt act against the Government of the United States, but who, at all times and under the most trying circumstances, have preserved their obligations, their loyalty, and their friendship.

*Resolved*, That the secretary of this meeting be, and he is, instructed to deliver copies of this resolution to the Secretary of the Interior and to the Dawes Commission at Muskogee, and that they then be requested to reply to the same, addressing such communications as they may make to Richard C. Adams and John Bullette, attorneys and representatives of the Delaware Indians, care of Richard C. Adams, Bond Building, Washington, D. C.

COL. (his X mark) JACKSON, *Chairman*,  
I. N. JOURNEYCAKE, *Secretary*.

Witness to mark:

JOHN R. WILLEY.  
A. H. NORWOOD.

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EXHIBIT 27.

MUSKOGEE, IND. T., *October 20, 1902.*

THE SECRETARY OF THE INTERIOR.

SIR: Receipt is hereby acknowledged of a communication from Walter S. Logan, dated October 2, 1902, relating to allotments of land in the Cherokee Nation to the Delaware Indians, which was referred by the Department to this Commission for consideration, report, and recommendation on October 6, 1902.

After calling attention to the issues involved in the suit of the Delaware Indians against the Cherokee Nation, now pending in the Court of Claims, and giving the present status of the case, Mr. Logan states:

"We ask of the Department of the Interior that no distribution or allotment be made of the Cherokee lands until the final determination of the suit in the Court of Claims, unless the rights of the Delawares as claimed in their petition in the suit in the Court of Claims be in every way protected.

"Such rights will not be protected unless—

"1. The 157,600 acres which the Delawares claim to own by virtue of their purchase of the same and payment therefor be first segregated and set apart, so that no distribution or allotment of the same shall be made.

"2. Unless each Delaware have the same opportunity as each Cherokee to select and segregate—subject to the future determination of the court—such lands as under the Delawares' claims he is entitled to as a Cherokee citizen and outside of the 157,600 acres of land purchased by the Delawares.

"If the Delawares were not allowed to make their selections at the same time that the Cherokees made theirs, the Delaware citizen of the Cherokee Nation would be at a disadvantage compared with the Cherokee, in that in case the decision of the Court of Claims is in favor of the Delawares he could only take such lands as had been left after the Cherokees had made their selection. The Delaware should have the same right to select what he considers the choicest lands as the Cherokee has. No distinction should be made between them so far as such selection is concerned.

"The Delawares, by virtue of moneys heretofore paid to them by the United States in consideration of lands which they gave up at the time, have been in possession of considerable funds and have used those funds under the advice of the Secretary in improving lands which they selected and which they have made their homes in the Indian Territory. Their improvements cover far more than the

157,600 acres. In fact, they cover not only the 157,600 acres, but nearly all they will receive in case the suit in the Court of Claims is decided in their favor as Cherokee citizens. Outside of the 157,600 acres purchased and paid for by the Delawares, the Cherokees are allowed to have priority in the selection of their lands. Many Delawares will be ousted from their homes and from the lands on which they have spent large sums of money for improvements, under the advice of your Department, and have no redress therefor.

"I submit that all selections and allotments of land outside of the 157,600 acres be postponed until after the final determination of the suit in the Court of Claims, or that the Delawares should be allowed to make provisional selections—to hold good in case the suit is decided in their favor—at the same time that the Cherokees make their selections.

"In this way the rights of all parties will be preserved. The Delawares will get what they are entitled to in case the suit is determined in their favor; the Cherokees will lose no rights which they possess."

With reference to the proposition to delay the allotment of Cherokee lands "until the final determination of the suit in the Court of Claims," attention is invited to section 23 of the act of Congress approved July 1, 1902 (Public—No. 241), which is as follows:

"**SEC. 23.** All Delaware Indians who are members of the Cherokee Nation shall take lands and share in the funds of the tribe, as their rights may be determined by the judgment of the Court of Claims, or by the Supreme Court if appealed, in the suit instituted therein by the Delawares against the Cherokee Nation, and now pending; but if said suit be not determined before said Commission is ready to begin the allotment of lands of the tribe as herein provided, the Commission shall cause to be segregated one hundred and fifty-seven thousand six hundred acres of land, including lands which have been selected and occupied by Delawares in conformity to the provisions of their agreement with the Cherokees dated April eighth, eighteen hundred and sixty-seven, such lands so to remain, subject to disposition according to such judgment as may be rendered in said cause; and said Commission shall thereupon proceed to the allotment of the remaining lands of the tribe as aforesaid. Said Commission shall, when final judgment is rendered, allot lands to such Delawares in conformity to the terms of the judgment and their individual rights thereunder. Nothing in this act shall in any manner impair the rights of either party to said contract as the same may be finally determined by the court, or shall interfere with the holdings of the Delawares under their contract with the Cherokees of April eighth, eighteen hundred and sixty-seven, until their rights under said contract are determined by the courts in their suit now pending against the Cherokees, and said suit shall be advanced on the dockets of said courts and determined at the earliest time practicable."

The language of said section clearly shows that the allotment of Cherokee lands was not to be delayed by the suit now pending in the Court of Claims, and the representations made by Mr. Logan carry with them the certainty that if the decision of said court should be adverse to the Delawares, in any particular, a further request for delay in allotment would be made by the Delawares on the ground that their rights had not yet been adjudicated by the Supreme Court, to which an appeal from the Court of Claims will lie.

On the other hand, should the allotment be delayed on the request of the Delawares until the case has been decided by the Court of Claims, the Cherokee Nation, should the decision of said court be adverse to it, would be entitled to have the allotment further delayed on its request in the expectation that the decision of the Supreme Court would be in its favor.

The Commission is of the opinion that the statute above quoted does not contemplate an allotment to each Delaware of an amount of land equal to the per capita share of each Cherokee in addition to the allotment which such Delaware will receive from the 157,600 acres to be segregated, pending the determination of said suit, and that to adopt the contrary view in proceeding with the Cherokee allotment would place at a serious disadvantage innumerable Cherokees who, unlike the Delawares, have neither improved lands nor homes of their own.

The 157,600 acres of land to be segregated for the Delawares are to include lands heretofore selected, occupied, and improved by them, and upon which all of said Delawares are living, as is set forth on page 10 of their petition in the suit now pending in the Court of Claims, as follows:

"That thereupon the said Delawares selected the said 157,600 acres of land from the said Cherokee Reservation east of line 96, not theretofore selected or in possession of other parties, entered into the occupancy and possession of the same, and made extensive and valuable improvements thereon, and they, their children, descendants, heirs at law, and personal representatives have continued to occupy and possess the

said lands and the said improvements, and have continued to make extensive and valuable improvements thereon and to reside thereon down to the present time."

Holding to the opinion that the Commission is without authority of law to make allotments to Delawares of the land not embraced in the segregation provided for in the statute above quoted, and that the allotments to Cherokees should begin at the earliest date possible, the Commission believes, however, that upon the application of any Delaware citizen there should be reserved from allotment until the final determination of the suit of the Delawares against the Cherokees only such lands not embraced in said segregation and not exceeding land equal in value to 110 acres of average allottable lands of the Cherokee Nation as contains permanent and valuable improvements owned by such Delaware citizen.

Such a course would, in the opinion of the Commission, fully protect the rights of all Delawares in and to all improved lands held by them on August 7, 1902, the date of the ratification of the act of Congress approved July 1, 1902 (Public—No. 241), and would not interfere with the selection of allotments from the unimproved public domain by Cherokee citizens.

Mr. Logan's letter of October 2, 1902, is herewith inclosed.

Respectfully submitted.

\_\_\_\_\_, *Acting Chairman.*  
 \_\_\_\_\_, *Commissioner.*  
 \_\_\_\_\_, *Commissioner.*

(Through the Commissioner of Indian Affairs.)

EXHIBIT 28.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,  
 Washington, November 22, 1902.

THE SECRETARY OF THE INTERIOR.

SIR: There is inclosed herewith a report from the Commission to the Five Civilized Tribes, dated October 20, 1902, relative to the requests of Walter S. Logan, attorney for the Delawares in their suit against the Cherokee Nation, contained in his letter of October 2, 1902, which was referred by the Department to the Commission for report and recommendation on October 6 last.

Mr. Logan in his communication states that he does not ask the Department to prejudge the case in favor of his clients; that Congress has referred a determination of the rights of the respective parties to the court, and that it would be out of place for him to argue the same before the Department.

In his letter Mr. Logan invites attention to the issues involved in the suit mentioned, which is now pending in the Court of Claims, gives the present status of the case, and states:

"We ask of the Department of the Interior that no distribution or allotment be made of the Cherokee lands until the final determination of the suit in the Court of Claims, unless the rights of the Delawares as claimed in their petition in the suit in the Court of Claims be in every way protected.

"Such right will not be protected unless—

"1. The 157,600 acres which the Delawares claim to own by virtue of their purchase of the same and payment therefor be first segregated and set apart, so that no distribution or allotment of the same shall be made.

"2. Unless each Delaware have the same opportunity as each Cherokee to select and segregate—subject to the future determination of the court—such lands as under the Delawares' claim he is entitled to as a Cherokee citizen and outside of the 157,600 acres of land purchased by the Delawares.

"If the Delawares were not allowed to make their selections at the same time that the Cherokees made theirs the Delaware citizen of the Cherokee Nation would be at a disadvantage compared to the Cherokee, in that in case the decision of the Court of Claims is in favor of the Delawares he would only take such land as had been left after the Cherokees had made their selection. The Delaware should have the same right to select what he considers the choicest lands as the Cherokee has. No distinction should be made between them so far as such selection is concerned.

"The Delawares, by virtue of moneys heretofore paid to them by the United States in consideration of lands which they gave up at the time, have been in possession of considerable funds and have used those funds under the advice of the Secretary in improving lands which they selected and which they have made their homes in the Indian Territory. Their improvements cover far more than the



157,600 acres—in fact they cover not only the 157,600 acres, but nearly all they will receive in case the suit in the Court of Claims is decided in their favor, as Cherokee citizens, outside of the 157,600 acres of land. If, after the segregation of the 157,600 acres purchased and paid for by the Delawares, the Cherokees are allowed to have priority in the selection of their lands many Delawares will be ousted from their homes and from the lands on which they have spent large sums of money for improvements under the advice of your Department, and have no redress therefor.

“I submit that all selections and allotments of land outside of the 157,600 acres be postponed until after the final determination of the suit in the Court of Claims, or that the Delawares should be allowed to make provisional selections—to hold good in case the suit is decided in their favor—at the same time that the Cherokees make their selections.

“In this way the rights of all parties will be preserved. The Delawares will get what they are entitled to in case the suit is determined in their favor. The Cherokees will lose no rights which they possess.”

The Commission, with reference to Mr. Logan's request that the allotment of Cherokee lands be held “until the final determination of the suit in the Court of Claims,” invites attention to section 23 of the Cherokee agreement, which is as follows:

“All Delaware Indians who are members of the Cherokee Nation shall take lands and share in the funds of the tribe, as their rights may be determined by the judgment of the Court of Claims, or by the Supreme Court if appealed, in the suit instituted therein by the Delawares against the Cherokee Nation and now pending; but if said suit be not determined before said Commission is ready to begin the allotment of lands of the tribe as herein provided, the Commission shall cause to be segregated one hundred and fifty-seven thousand six hundred acres of land, including lands which have been selected and occupied by Delawares in conformity to the provisions of their agreement with the Cherokees dated April eighth, eighteen hundred and sixty-seven, such lands so to remain, subject to disposition according to such judgment as may be rendered in said cause; and said Commission shall thereupon proceed to the allotment of the remaining lands of the tribes as aforesaid. Said Commission shall, when final judgment is rendered, allot lands to such Delawares in conformity to the terms of the judgment and their individual rights thereunder. Nothing in this act shall in any manner impair the rights of either party to said contract as the same may be finally determined by the court, or shall interfere with the holdings of the Delawares under their contract with the Cherokees of April eighth, eighteen hundred and sixty-seven, until their rights under said contract are determined by the courts in their suit now pending against the Cherokees, and said suits shall be advanced on the dockets of said courts and determined at the earliest time practicable.”—

and takes the position that said section clearly shows that it was not the intention of Congress to permit the allotment work to be delayed because of the fact that said suit was pending in the Court of Claims.

It states that the representations made by Mr. Logan carry with them the certainty that if the decision of the court should be adverse to the Delawares in any particular a request for further delay of the allotment work would be made by the Delawares on the ground that their rights had not yet been adjudicated by the Supreme Court, to which an appeal from the Court of Claims will lie; that should the request be granted and the decision of the Court of Claims be adverse to the contention of the Delawares, the Delawares would be entitled to have the allotment work further delayed on the ground that they expected a decision in their favor of the Supreme Court.

The Commission gives it as its opinion that the statute above quoted does not contemplate an allotment to each Delaware of an amount of land equal to the per capita share of each Cherokee: “in addition to the allotment which such Delaware will receive from the 157,600 acres to be segregated pending the determination of said suit, and that to adopt the contrary view in proceeding with the Cherokee allotment would place at a serious disadvantage innumerable Cherokees, who, unlike the Delawares, have neither improved lands nor homes of their own.”

The Commission states that the 157,600 acres of land to be segregated for the Delawares are to include lands heretofore selected, occupied, and improved by them and upon which they are now living, and invited attention to the following quotation from the petition of the Delawares in the suit now pending in the Court of Claims:

“That thereupon the said Delawares selected the said 157,600 acres of land from the said Cherokee Reservation east of line 96<sup>th</sup>, not theretofore selected or in possession of other parties, entered into the occupancy and possession of the same and made extensive and valuable improvements thereon, and they, their children,

descendants, heirs-at-law, and personal representatives, have continued to occupy and possess the said lands and the said improvements and have continued to make extensive and valuable improvements thereon and to reside thereon down to the present time."

The Commission holds that it has no authority under the law to make allotments to Delawares of land not embraced in the segregation required by the agreement; that the allotments to the Cherokee should begin at the earliest possible date; that upon the application of any Delaware citizen there should be reserved from allotment until the final determination of the suit mentioned, such lands not embraced in such segregation not exceeding an amount equal in value to 110 acres of average allotable land of the Cherokee Nation "as contain permanent and valuable improvements owned by such Delaware citizen." The Commission is of the opinion that if the course outlined by it is pursued, the rights of the Delawares will be fully protected.

As this office understands the contention of the Delawares, they claim they are not entitled to ——— acres, but are also entitled to share equally with the other citizens of the Cherokee Nation in the remaining lands.

Section 23 of the Cherokee agreement specifically declares that if the suit "be not determined before said Commission is ready to begin the allotment of lands of the tribe as provided herein, the Commission shall cause to be segregated 157,600 acres of land, including the lands which have been selected and occupied by the Delawares," and directs that the Commission "shall thereupon proceed to the allotment of the remaining lands of the tribe as aforesaid."

The office agrees with the Commission that it was not the intention of Congress to delay the allotment work in the Cherokee Nation until the suit between the Delawares and the Cherokees shall have been finally determined, and it therefore respectfully recommends that the Commission's report be approved and that it be instructed to proceed in accordance therewith.

Very respectfully, your obedient servant,

W. A. JONES, *Commissioner.*

EXHIBIT 29.

DEPARTMENT OF THE INTERIOR,  
*Washington, November 29, 1902.*

MR. WALTER S. LOGAN,  
*27 William street, New York, N. Y.*

SIR: Referring to your letter of October 2, 1902, having relation to the suit of the Delaware Indians now pending in the Court of Claims, you are informed that the Department is in receipt of a report from the Dawes Commission, dated October 20, 1902, in the matter. A copy of said report is inclosed herewith, together with a copy of the report of the Commissioner of Indian Affairs.

The Department concurs in the views expressed by the Commission, as also does the Commissioner.

Respectfully,

THOS. RYAN, *Acting Secretary.*

EXHIBIT 30.

DEPARTMENT OF THE INTERIOR,  
COMMISSION TO THE FIVE CIVILIZED TRIBES,  
*Muscogee, Ind. T., January 5, 1902.*

WALTER S. LOGAN, Esq.,  
*Bond Building, Washington, D. C.*

DEAR SIR: Herewith inclosed find letter of this date addressed, jointly, to Walter S. Logan, attorney for petitioners, and William T. Hutchings, attorney for respondents, relative to the segregation of Delaware lands under the provisions of section 23 of the act of Congress approved July 1, 1902 (32 Stat. L., 716), and to certain discrepancies or clerical errors found in the stipulation of counsel for parties in the case of the Delaware Indians *v.* the Cherokee Nation (U. S. Court of Claims, No. 21139), dated at Washington, D. C., December 10, 1902.

A copy of said letter has this day been transmitted to William T. Hutchings, esq., Muscogee, Ind. T.

Yours truly,

TAMS BIXBY, *Acting Chairman.*

## EXHIBIT 31.

DEPARTMENT OF THE INTERIOR,  
COMMISSION TO THE FIVE CIVILIZED TRIBES,*Muskogee, Ind. T., January 5, 1905.*WALTER S. LOGAN, *Attorney for Petitioners.*WILLIAM T. HUTCHINGS, *Attorney for Respondents.*

GENTLEMEN: There was filed in the office of this Commission on December 16, 1902, what purports to be a copy of a stipulation of counsel theretofore filed in the United States Court of Claims, in the case of the Delaware Indians *v.* The Cherokee Nation (No. 21139), which stipulation, omitting the caption, is as follows:

"In pursuance of leave reserved and granted by the court upon the final hearing of this case, it is hereby stipulated and agreed that the record herein be amended by substituting in the place of the incorrect descriptions given in the record herein of the 157,600 acres selected and claimed by the Delawares, the annexed descriptions, which, upon careful examination, have been found correct.

"And it is further stipulated and agreed that the court may, in its decision and final judgment herein, use the annexed correct descriptions in the place of the incorrect descriptions contained in said record; provided, however, such substituted descriptions do not interfere with the lawful rights or claims of other Cherokee citizens.

"WALTER S. LOGAN, *Attorney for Petitioners.*

"WILLIAM T. HUTCHINGS, *Attorney for Respondents.*

"WASHINGTON, D. C., *December 10, 1902.*"

Following the above are the descriptions of the lands therein referred to, aggregating 157,601.74 acres, said descriptions being arranged in paragraphs designated by letters from A to Z, AA to ZZ, and AAA to PPP.

In accordance with the provisions of section 23 of the act of Congress approved July 1, 1902 (32 Stat. L., 716), the Commission has segregated and reserved from allotment, subject to disposition according to such judgment as may be rendered in said cause, 157,541.74 acres of land in the Cherokee Nation, the same being the land described in said stipulation, less 60 acres, accounted for as follows:

(a) On page 9, paragraph L, section 5 calls for lots 1 and 2 and E.  $\frac{1}{2}$  of NW.  $\frac{1}{4}$  of sec. 30, T. 21 N., R. 13 E., and gives area as 159.96 acres. The area of this quarter section, as expressed upon the official township plat, is 159.78 acres. [Our plat shows area to be 159.96 acres.] The area originally was as given in the stipulation, 159.96, but owing to corrections in areas of lots it now appears as 159.78 acres. Deficit, 0.18 acre.

(b) On page 9, paragraph L, section 6 calls for lots 1 and 2 of sec. 31, T. 21 N., R. 13 E., and gives area as 79.96 acres. [Our plat shows area to be 79.96 acres.] The areas of these two lots, as expressed upon official plat, is 79.34 acres. Deficit, 0.62 acre.

(c) On page 14, paragraph Q, section 4 calls for all of sec. 7, T. 26 N., R. 13 E. 12.34 acres of this section are included within the limits of the town site of Bartlesville. [Delawares were there first, and insist on "all" of this section.] Deficit, 12.34 acres.

(d) On page 46, paragraph II, section 3 calls for the SE.  $\frac{1}{4}$  sec. 8, T. 23 N., R. 16 E., containing 160 acres. [Our plat shows area to be 143.99 acres.] This quarter section is rendered fractional by the Verdigris River, and contains a land area of but 143.99 acres. Deficit, 16.01 acres.

(e) On page 46, paragraph II, section 6 calls for lot 4 of sec. 30, T. 23 N., R. 16 E., giving area of same as 39.33 acres. [Lot "4" should be lot "7" (or SW. "SW.") 39.33 acres.] The official township plat shows area of this lot to be 38.80 acres. Deficit, 0.53 acre.

(f) On page 51, paragraph LL, section 2 calls for the N.  $\frac{1}{2}$  and SW.  $\frac{1}{4}$  of sec. 4, T. 26 N., R. 16 E., and gives area of same as 480 acres. [Our plat shows area to be 480.08 acres.] The official township plat shows area of these tracts of land to be 480.08 acres. Excess, 0.08 acre.

(g) On page 54, paragraph MM, section 1 calls for the W.  $\frac{1}{2}$  sec. 6, T. 27 N., R. 16 E. [Delawares were there first, and insist on all of the W.  $\frac{1}{2}$ .] 12.50 acres of the W.  $\frac{1}{2}$  of said section are included within the limits of the town site of Lenepah. Deficit, 12.50 acres.

(h) On page 63, paragraph VV, section 3 calls for the NE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$  sec. 20, T. 15 N., R. 19 E., and gives area as 40 acres. The NE.  $\frac{1}{4}$  of NW.  $\frac{1}{4}$  of said section is lot 1, being rendered fractional by the Creek-Cherokee boundary line, and contains 39.98 acres. [NE. "NW." should be lot 1—39.98 acres, as shown by our plat.] Deficit, 0.02 acre.

(i) On page 72, paragraph OOO, section 1 (a) calls for the S.  $\frac{1}{2}$  NE.  $\frac{1}{4}$  sec. 6, T. 11 N., R. 24 E., giving area as 80 acres. 17.80 acres of said tract are included within the limits of the town site of Sallisaw. Deficit, 17.80 acres.

(j) On page 73, paragraph OOO, section 1 (d) calls for the N.  $\frac{1}{2}$  SE.  $\frac{1}{4}$  sec. 6, T. 11 N., R. 24 E., and gives area as 80 acres. 0.08 of an acre of the above-described tract is included within the limits of the town site of Sallisaw. Deficit, 0.08 acre.

## SUMMARY.

|                   | Acres. |
|-------------------|--------|
| Deficit (a) ..... | 0.18   |
| Deficit (b) ..... | .62    |
| Deficit (c) ..... | 12.34  |
| Deficit (d) ..... | 16.01  |
| Deficit (e) ..... | .53    |
| Deficit (g) ..... | 12.50  |
| Deficit (h) ..... | .02    |
| Deficit (i) ..... | 17.80  |
| Deficit (j) ..... | .08    |
|                   | 60.08  |
| Excess (f) .....  | .08    |
|                   | 60.00  |
| Net deficit ..... | 60.00  |

In addition to the foregoing there have been found certain discrepancies, which appear to be clerical errors, as follows:

On page 2, paragraph F, section 1, calls for SW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$  sec. 31, T. 25 N., R. 12 E. There is no section 31 in this fractional township, and the same by location would be in the Osage Nation. This is probably a transposition of figures and intended for section 13.

On page 4, paragraph H, section 4, calls for E.  $\frac{1}{4}$  NW.  $\frac{1}{4}$  sec. 13, T. 27 N., R. 12 E. This is apparently a clerical error and intended for the E.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ .

On page 12, paragraph P, section 8 (b), calls for the SW.  $\frac{1}{4}$  sec. 10, T. 25 N., R. 13 E. This is apparently a clerical error and intended for the SE.  $\frac{1}{4}$ , as section 8 (a) of the same paragraph, on page 11, calls for the W.  $\frac{1}{2}$  sec. 10, T. 25 N., R. 13 E., which includes the SW.  $\frac{1}{4}$  of said section.

On page 42, paragraph EE, section 1 (a), the  $\frac{1}{4}$  has been omitted from the description, which reads "S.  $\frac{1}{2}$  S.  $\frac{1}{2}$  NW. sec. 6, T. 27 N., R. 15 E."

On page 42, paragraph EE, section 1 (c), calls in part for the W.  $\frac{1}{2}$  SE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$  of sec. 6, T. 27 N., R. 15 E. The description SE.  $\frac{1}{4}$  is apparently intended for SE.  $\frac{1}{4}$ .

On page 71, paragraph III, section 5, calls for lots 1, 2, 3, 4, 5, and 7, of sec. 11, T. 23 N., R. 21 E., and gives area as 187.80 acres. The official township plat shows area of these lots to be 149.20 acres. The addition of lot 6, however, of the same section, which lot contains 38.60 acres, would make a total area of 187.80 acres as called for in stipulation, and it appears that either lot 6 was omitted from stipulation by mistake, or if intentionally omitted, the change in total area was not made. (Lot 6 was temporarily reserved, making the area of reservation agree with that given in stipulation in this case.)

On page 72, paragraph JJJ, section 7, calls for the S.  $\frac{1}{4}$  SW.  $\frac{1}{4}$  sec. 25, T. 24 N., R. 21 E., giving area as 80 acres. This was apparently intended for S.  $\frac{1}{2}$  SW.  $\frac{1}{4}$  of said section.

In those cases where clerical errors have been discovered, as aforesaid, the Commission has made a tentative segregation of the land which it believed the counsel intended to describe in said stipulation and as previously indicated.

You are therefore respectfully requested to advise the Commission of such action as you may take to amend or correct the record in said cause in so far as it relates to the description of the land claimed by the Delawares, and to file with the Commission at the earliest date possible a certified copy of such instrument as may be filed in said court for that purpose.

Yours, truly,

TAMS BIXBY, *Acting Chairman.*

## EXHIBIT 32.

JANUARY 15, 1903.

Hon. TAMS BIXBY,

*Acting Chairman, Commission to the Five Civilized Tribes, Muskogee, Ind. T.*

DEAR SIR: Inclosed I hand you certified copy of the second amended description of the Delaware lands. On reviewing we find that several corrections were necessary,

substantially what you called our attention to in your letter; that is, on page 2, one correction; page 4, one correction; page 9, two corrections; page 12, one correction, and on page 14 we take exception to the town of Bartlesville intruding on Delaware lands. Arthur Armstrong, a Delaware Indian, who owns this land, had been living there many years before the town of Bartlesville was thought of.

On page 42 we make two corrections; on page 46, two corrections; on page 51, one correction, and on page 54, which you claim that part of the selection belongs to the town of Lenapah, we do not concede this for the same reason as above; that is, we had made the selections before the town was surveyed. On page 63 we make two corrections; on page 72, one correction, and on pages 73 and 74 we contend that our rights to this land are older and better than the rights of the town of Salisaw.

We offer as a substitute for any shortage the following: SE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$  sec. 6, T. 26 N., R. 13 E., 40 acres, and the NE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$  sec. 6, T. 27 N., R. 13 E., 40 acres. Out of these 80 acres you can take our shortage, taking first the 40 acres described in T. 26, R. 13, and whatever is still lacking take out of the other 40 acres. Both of these 40s are Delaware lands, in possession of Delaware Indians, and can well go into the segregated lands.

Yours, respectfully,

RICHARD C. ADAMS.

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EXHIBIT 33.

DEPARTMENT OF THE INTERIOR,  
COMMISSION TO THE FIVE CIVILIZED TRIBES,  
*Muskogee, Ind. T., March 17, 1903.*

THE SECRETARY OF THE INTERIOR.

SIR: We have the honor to respectfully submit herewith the following statement of the work of the Commission to the Five Civilized Tribes for the month of February, 1903:

Supplemental testimony was taken in 204 cases wherein the applicants have not yet been placed on the final roll of citizens of the Cherokee Nation.

Twenty-eight applications, wherein it appeared that the record was complete, were forwarded to the general office of the Commission at Muskogee, in order that decisions might be prepared.

During the month at the general office at Muskogee decisions have been prepared in 50 applications for enrollment as citizens other than freedmen, in which there were embraced 103 applicants. Decisions have likewise been prepared in 384 applications for enrollment as Cherokee freedmen, in which were embraced 1,077 applicants.

Applications for 1,673 allotments and homesteads were received during February. Of this number 1,193 were approved. The approval of 372 was withheld because the enrollment of the applicants as citizens of the Cherokee Nation had not been finally approved by the Secretary of the Interior; 51 because the land applied for had already been allotted; 38 because the land applied for was embraced in the 157,600 acres of land which the Commission caused to be segregated for the Delaware Indians pending the determination of the suit instituted in the Court of Claims, and in the Supreme Court, if appealed, by the Delawares against the Cherokee Nation, and 9 because the land applied for was embraced in tentative reservations heretofore made for certain towns in the Cherokee Nation.

During the month there were approved by the Secretary of the Interior schedules in which were embraced the names of 206 persons whose applications for allotments had previously been received. Thereupon the applications were made regular. Twenty-two are still being held, as the land for which the applicants apply had already been allotted to other citizens and for various other purposes.

Seven hundred and fifty certificates of allotment and 500 homestead certificates have been written and await distribution.

Owing to the great amount of rain in this section of the nation in the past two months the roads are quite impassable, and it is almost impossible for those persons who have to travel overland to appear at the land office and make their selection of allotments.

Almost all of the applicants who have appeared to date are those who live within easy reach of the railroads leading to Vinita. But few of the full-bloods have appeared. The majority of them reside north and east of Tablequah, and it has been impossible for them to cross Grand River, which had been extremely high during the entire month.

Had the required number of applicants appeared it is believed that no less than 2,000 allotments would have been made during the month just ended.

## ALLOTMENT CONTEST DIVISION.

The progress of the work in the allotment contest division during the month of February and the condition of contested allotment cases at the close of the month, as indicated by the records of that division, are shown by the following detailed statement:

*Cherokee Nation.*

|  |    |
|--|----|
| Contests instituted prior to February 1.....   | 40 |
| Contests filed during February.....  | 24 |
| Complaints returned for correction during February.....  | 18 |
| Contests instituted during February.....   | 6  |
| The condition of the 6 Cherokee cases pending before the Commission on February 28 was as follows: |    |
| Awaiting final determination of citizenship.....   | 1  |
| Set for trial.....   | 5  |
| Total.....   | 6  |

Respectfully submitted,

TAMS BINBY, *Chairman.*  
 T. B. NEEDLES, *Commissioner.*  
 C. R. BRECKINRIDGE, *Commissioner.*  
 W. E. STANLEY, *Commissioner.*

(Through the Commissioner of Indian Affairs.)

## EXHIBIT 34.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,  
*Washington, March 27, 1903.*

THE SECRETARY OF THE INTERIOR.

SIR: I have the honor to forward herewith monthly report of the Commission to the Five Civilized Tribes for the month of February, 1903, the report being dated March 17, 1903.

In this connection permit me to say that there are now pending in this office the following citizenship cases:

|                          |     |
|--------------------------|-----|
| Mississippi Choctaw..... | 91  |
| Choctaw by blood.....    | 108 |
| Chickasaw.....           | 2   |
| Cherokee.....            | 65  |
| Creek.....               | 1   |

Very respectfully,

\_\_\_\_\_, *Acting Commissioner.*

## EXHIBIT 35.

DEPARTMENT OF THE INTERIOR,  
*Washington, March 30, 1903.*

COMMISSION TO THE FIVE CIVILIZED TRIBES,  
*Muscogee, Ind. T.*

GENTLEMEN: The Department is in receipt of your monthly report dated March 17, 1903, detailing the work done by your Commission during the month of February, 1903, and you are informed that the same has been examined and is hereby approved.

A copy of the report of the Acting Commissioner of Indian Affairs, in which he gives the number of citizenship cases that are pending in the Indian Office, is inclosed herewith.

Respectfully,

THOS. RYAN, *Acting Secretary.*

## EXHIBIT 36.

MUSCOGEE, IND. T., April 16, 1903.

The SECRETARY OF THE INTERIOR.

SIR: We have the honor to respectfully submit herewith the following statement of the work of the Commission to the Five Civilized Tribes for the month of March, 1903:

\* \* \* \* \*

## CHEROKEE ALLOTMENT DIVISION.

During the month of March, 1903, 1,204 tickets of admission to the Cherokee land office were issued, making a total of 6,630 tickets issued since the office was opened on January 1, 1903. Approximately 3,000 tickets have been called. Of this number only 1,705 have responded.

Six hundred and thirty-one citizenship certificates, embracing 1,521 applicants, and 332 reservation certificates, embracing 659 applicants, were issued during the month of March.

Applications for 2,642 allotments and homesteads were received during March. Of this number 1,775 were approved. The approval of 707 was withheld because the enrollment of the applicants as citizens of the Cherokee Nation had not been finally approved by the Secretary of the Interior; 103 because the land applied for had already been allotted, and 57 because the land applied for was embraced in the 157,600 acres of land which the Commission caused to be segregated for the Delaware Indians pending the determination of the suit now pending in the Court of Claims.

Nine hundred and ninety-one certificates of allotment and 958 homestead certificates have been written, and as soon as the allotments are entered thereon in color they will be submitted to the Commission for signature.

During the month 1,250 allotment certificates and an equal number of homestead certificates were submitted to the Commission for signature. Two hundred and fifty allotment and 250 homestead certificates were executed during the month, and in cases where no contest has been entered the certificates have been forwarded to the allottees.

\* \* \* \* \*

## ALLOTMENT CONTEST DIVISION.

The progress of the work in the allotment contest division during the month of March and the condition of contested allotment cases at the close of the month, as indicated by the records of that division, are shown by the following detailed statement:

\* \* \* \* \*

|   |    |
|---|----|
| Contests instituted prior to March 1 .....            | 6  |
| Complaints filed during March .....                   | 43 |
| Complaints returned for correction during March ..... | 27 |

|  |    |
|--|----|
| Contests instituted during March ..... | 16 |
|--|----|

|             |    |
|-------------|----|
| Total ..... | 22 |
|-------------|----|

|   |    |
|---|----|
| Contests disposed of prior to March 1 .....           | 0  |
| Contests disposed of during March .....               | 1  |
| Contests pending before the Commission March 31 ..... | 21 |
| Contests pending an appeal March 31 .....             | 0  |

|             |    |
|-------------|----|
| Total ..... | 22 |
|-------------|----|

The condition of the 21 cases pending before the Commission March 31 was as follows:

|  |   |
|--|---|
| Awaiting final determination of citizenship .....        | 2 |
| Set for trial .....                                      | 9 |
| Awaiting final hearing in companion case .....           | 2 |
| Awaiting issuance of notice of contest and summons ..... | 8 |

|             |    |
|-------------|----|
| Total ..... | 21 |
|-------------|----|

Respectfully submitted.

\_\_\_\_\_, *Chairman.*  
 \_\_\_\_\_, *Commissioner.*  
 \_\_\_\_\_, *Commissioner.*  
 \_\_\_\_\_, *Commissioner.*

(Through the Commissioner of Indian Affairs.)

## EXHIBIT 37.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,  
Washington, April 30, 1903.

THE SECRETARY OF THE INTERIOR.

SIR: There is transmitted herewith the report of the Commission to the Five Civilized Tribes relative to the work of the Commission performed during the month of March, 1903. The Commission, in transmitting this report to the Office, included therein what they no doubt considered a copy of said report, but upon examination the Office, finds that the same is not a copy, but does seem to be a copy of the Commission's report of the work performed by it in the month of February, 1903.

There is inclosed herewith the copy of said February report which has been on file in the Office, so that the Department can compare this February copy with the intended copy of March, 1903. The attention of the Commission should be called to this matter and a copy of the report furnished by it for the files of this Office. The Office concludes, of course, that there was simply a mistake in transmitting what was supposed to be a copy of the inclosed report, and which in fact is not a copy thereof, and yet it will be noticed that the word "February" in said copy has been erased and the word "March" substituted therefor.

In connection with the transmittal of these papers, the Office has to report that there is now on file in this Office, and undisposed of, the following citizenship cases:

|                              |    |
|------------------------------|----|
| Cherokee .....               | 30 |
| Intermarried Cherokees ..... | 57 |
| Creek .....                  | 4  |
| Choctaw .....                | 79 |
| Chickasaw .....              | 1  |
| Mississippi Choctaw .....    | 99 |

There is also one Creek land-contest case on file in the Office, that of Ross Hawkins *v.* Ellen Hawkins, which was appealed from the decision heretofore rendered therein and is now awaiting the decision of the Department in the matter of the application of said Ross Hawkins for citizenship in the Creek Nation.

Very respectfully,

A. C. TOXNER, *Acting Commissioner.*

## EXHIBIT 38.

DEPARTMENT OF THE INTERIOR,  
COMMISSION TO THE FIVE CIVILIZED TRIBES,  
Muskege, Ind. T., April 20, 1903.

THE SECRETARY OF THE INTERIOR.

SIR: Report is hereby respectfully made of the action of the Commission in segregating 157,600 acres of land under section 23 of the act of July 1, 1902 (32 Stat. L., 716), pending the determination of the suit of the Delaware Indians *v.* The Cherokee Nation, and submitting matters relating thereto for the consideration of the Department.

Said section 23 is as follows:

"SEC. 23. All Delaware Indians who are members of the Cherokee Nation shall take lands and share in the funds of the tribe, as their rights may be determined by the judgment of the Court of Claims, or by the Supreme Court if appealed, in the suit instituted therein by the Delawares against the Cherokee Nation, and now pending; but if said suit be not determined before said Commission is ready to begin the allotment of lands of the tribe as herein provided, the Commission shall cause to be segregated one hundred and fifty-seven thousand six hundred acres of land, including lands which have been selected and occupied by Delawares in conformity to the provisions of their agreement with the Cherokees dated April eighth, eighteen hundred and sixty-seven, such lands so to remain subject to disposition according to such judgment as may be rendered in said cause; and said Commission shall thereupon proceed to the allotment of the remaining lands of the tribe as aforesaid. Said Commission shall, when final judgment is rendered, allot lands to such Delawares in conformity to the terms of the judgment and their individual rights thereunder. Nothing in this act shall in any manner impair the rights of either party to said contract as the same may be finally determined by the court, or shall interfere with the holdings of the Delawares under their contract with the Cherokees of April eighth, eighteen hundred and sixty-seven, until their rights under said contract are determined by the courts in their suit now pending against the Cherokees, and said suit shall be advanced on the dockets of said courts and determined at the earliest time practicable."



In its communication of October 20, 1902, reporting on a letter from Mr. Walter S. Logan, referred to it by the Department, the Commission, among other things, said:

"The 157,600 acres of land to be segregated for the Delawares are to include lands heretofore selected, occupied, and improved by them, and upon which all of said Delawares are living, as is set forth on page 10 of their petition in the suit now pending in the Court of Claims, as follows:

"That thereupon the said Delawares selected the said 157,600 acres of land from the said Cherokee Reservation east of line 96°, not theretofore selected or in possession of other parties entered into the occupancy and possession of the same and made extensive and valuable improvements thereon, and they, their children, descendants, heirs at law, and personal representatives have continued to occupy the said lands and the said improvements, and have continued to make extensive and valuable improvements thereon and to reside thereon down to the present time."

Under date of November 29, 1902, the Department advised the Commission as follows:

"The Department is in receipt of your report dated October 20, 1902, in regard to a communication from Mr. Walter S. Logan concerning the suit of the Delaware Indians against the Cherokee Nation now pending in the Court of Claims.

"The Department concurs in the views expressed by your Commission, and has advised Mr. Logan to that effect. The Commissioner of Indian Affairs also concurred."

On December 16, 1902, there was filed with the Commission an amended schedule of land selected by the Delawares in the Cherokee Nation, said schedule being embodied in a stipulation of counsel, the preamble of which, after omitting the title, is as follows:

"In pursuance of leave reserved and granted by the court upon the final hearing of this case, it is hereby stipulated and agreed that the record herein be amended by substituting in the place of the incorrect description given in the record herein of the 157,600 acres selected and claimed by the Delawares, the annexed descriptions which, upon careful examination, have been found correct.

"And it is further stipulated and agreed that the court may, in its decision and final judgment herein, use the annexed corrected descriptions in the place of the incorrect descriptions contained in said record, provided, however, such substituted descriptions do not interfere with the lawful rights or claims of other Cherokee citizens.

"WALTER S. LOGAN, *Attorney for Petitioners.*

"WILLIAM T. HUTCHINGS, *Attorney for Respondent.*

"WASHINGTON, D. C., December 10, 1902."

On December 17, 1902, the Commission adopted the following resolution:

"Be it resolved by the Commission, That the acting chairman cause to be set aside and segregated 157,600 acres of land in the Cherokee Nation, in accordance with the provisions of section 23 of the act of Congress approved July 1, 1902 (Public—No. 241), subject to disposition according to such judgment as may be rendered in the case of the Delaware Indians *v.* Cherokee Nation now pending in the United States Court of Claims, and as shown by the description of said lands in the stipulation of counsel for parties in said case, dated at Washington, D. C., December 10, 1902."

In proceeding to carry said resolution into effect the Commission discovered numerous errors and discrepancies from the schedule submitted, which, by letter dated January 5, 1903, were called to the attention of Walter S. Logan and William T. Hutchings, counsel for petitioners and respondent, respectively, a copy of said letter being attached hereto and marked "Exhibit A."

On January 23, 1903, the Commission received from Richard C. Adams, claiming to represent the Delaware Indians at Washington, a certified copy of a "Second amended schedule of lands selected by the Delawares in the Cherokee Nation, as per stipulation of counsel," which contains the additional stipulation of counsel as follows:

"We agree to the corrections herein in ink on pages 2, 4, 9, 12, 14, 42, 46, 51, 54, 63, 72, 73, 74, being two corrections on pages 9, 42, 46, 63, and one on each of the other pages, subject to the within proviso.

"The 'above proviso' referred to in the additional stipulation just quoted refers to the following in the first stipulation quoted, viz. 'Provided, however, such substituted descriptions do not interfere with the lawful rights or claims of other Cherokee citizens.'"

A copy of Mr. Adams's letter of January 15, 1903, transmitting said omitted schedule, is herewith attached, marked "Exhibit B."

A comparison of the errors and discrepancies reported to counsel by the Commission with the correction made in the second amended schedule shows that the discrepancies which counsel failed to correct have reference to lands reported by the Indian inspector for Indian Territory to have been reserved by the Department for town-site purposes.

The Commission had reported to counsel that the schedule of Delaware lands embraced 12.34 acres within the limits of the town site of Bartlesville, 12.50 acres within the limits of the town site of Lenapah, and 17.88 acres within the limits of the town site of Sallisaw.

Referring to said report Mr. Adams, in his letter, states:

"On page 14 we take exception to the town of Bartlesville intruding on Delaware lands \* \* \* on page 54, which you claim that part of the selection belongs to the town of Lenapah, we do not concede this for the same reason as above—that is, we have made the selections before the town was surveyed \* \* \* and on pages 73 and 74 we contend that our rights to this land are older and better than the rights of the town of Sallisaw."

Since the opening of the Cherokee allotment at Vinita, Ind. T., on January 1, 1903, a number of Cherokee citizens have made application for allotments of land embraced wholly or in part in the segregation made for the Delawares. They claim in many instances to have been in possession of these lands for years and to own valuable improvements on same, and state that no Delaware citizen has occupied such land or owned any improvements thereon. Action on this class of applications has been deferred, pending the determination of the suit referred to.

In a communication dated April 7, 1903, a copy of which is hereto attached and marked "Exhibit C," Mr. Adams states:

"My understanding is that the 157,600 acres of land is segregated and that no Cherokee will be allowed to file on this land or receive allotment out of that until the Supreme Court has finally passed upon the rights of the Delaware Indians."

A copy of a letter to the same effect from Mr. Adams, dated April 10, 1903, is hereto attached and marked "Exhibit D."

From these it appears that notwithstanding the proviso in the stipulation of counsel that the substituted descriptions are not to interfere with the lawful rights or claims of other Cherokee citizens the Delawares, through Mr. Adams, take the position that if the decision of the Supreme Court is favorable to them the specific 157,600 acres described in the record of the case will vest absolutely in the Delawares, notwithstanding any claim which other Cherokee citizens may make to portions of the same land.

In addition to the contention of the Delawares for the lands embraced within the limits of the town sites mentioned quite a serious situation with reference to the Delaware segregation has developed in the work of allotment. Not a few Delaware citizens have presented themselves at the land office and asked to be allowed to make a final selection of lands containing their improvements and upon which they reside, claiming that no portion of the land occupied by them is included within the Delaware segregation.

The Commission has been informed informally of cases of numerous other Delaware citizens whose improved lands are not included within said segregation, and the statement has been frequently made that the representatives of the Delaware Indians, or other business committee, refused to schedule for segregation the lands of any Delaware citizen who failed to pay a pro rata share of the fee which said representatives of the committee demanded. The Delawares whose property rights are thus unprotected are for the most part in moderate circumstances, and the improvements upon the lands occupied by them represent in most instances the efforts of a lifetime.

The extent of the condition of affairs last mentioned is indicated by the correspondence with William Mairn, of Coodys Bluff, Ind. T., copies of which are hereto attached and marked "Exhibit E."

It is quite evident that while lands occupied by Delaware citizens have not been included in the schedule of lands made a part of the record in the suit of the Delawares an amount of the public domain of the Cherokee Nation sufficient to bring the total segregation up to 157,000 acres, has been included.

There are also attached hereto and marked "Exhibits F and G" copies of the reports of the clerk in charge of the Cherokee land in Vinita, dated February 12, 1903, showing that since the segregation of lands for Delawares by this Commission on December 17, 1902, the Department has fixed the exterior limits of the town sites of North Tilsa and Lawton in the Cherokee Nation, which embrace respectively 20.25 acres of land theretofore included in said Delaware segregation.

Under all circumstances the Commission believes that the lands embraced in the original schedule, and in the first and second amended schedules made a part of the second in the case of the Delawares, have not been selected with a due regard for the interests of either the Delaware citizens generally, or other citizens of the Cherokee Nation, and in so far as town sites are affected, without any intention of conforming to the laws relating to the establishment of such town sites.

The Commission is in the receipt of a communication from Mr. Adams to Hon. M. C. Quay, United States Senator from Pennsylvania, dated April 10, 1903, and referred by Senator Quay to the Commission. A copy of said letter and of Senator Quay's indorsement thereon is hereto attached and marked "Exhibit H." In this latest letter Mr. Adams takes the position that the Commission is without jurisdiction to receive applications of the Cherokee citizens for lands embraced in the Delaware segregation, notwithstanding the provision of counsel in the stipulation heretofore set forth providing for the protection of the property rights of other Cherokee citizens.

The Commission believes that some steps should be taken to guard against the possibility of the Supreme Court rendering a judgment adopting said schedule as to definite and specific tracts of land to which the Delawares are entitled under their claim, and respectfully request that the Department may issue such instructions as it may deem proper in the premises.

Respectfully,

TAMS BIXBY, *Chairman.*

THOMAS B. NEEDLES, *Commissioner.*

C. R. BRECKINRIDGE, *Commissioner.*

W. E. STANLEY, *Commissioner.*

(Through the Commissioner of Indian Affairs.)

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EXHIBIT 39.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,  
Washington, April 28, 1903.

THE SECRETARY OF THE INTERIOR.

SIR: Referring to office report of November 22, 1902, to Department letter of November 25, 1902, to office report of March 27, 1903, and to Department letter of March 30, 1903, there is inclosed herewith a communication from Mr. Richard C. Adams, dated April 18, 1903, relative to the segregation of Delaware lands in the Cherokee Nation, Ind. T., in accordance with the provisions of the Cherokee agreement.

Mr. Adams invites attention to the provision of section 25 of the Curtis Act, which authorized the Delawares residing in the Cherokee Nation to bring suit in the Court of Claims against the Cherokee Nation for the purpose of determining the rights of the Delawares in and to the lands and funds of said Nation, under the Cherokee-Delaware agreement of April 8, 1867, and declares that "before any allotment shall be made from said lands in the Cherokee Nation there shall be segregated therefrom by the Commission heretofore mentioned, in separate allotments, or otherwise, the 157,600 acres purchased by the Delaware tribe of Indians from the Cherokee Nation" under the agreement of April 8, 1867.

He states that no action was taken by the Commission to the Five Civilized Tribes, as required by the provisions of section 25 of the Curtis Act, until after the ratification of the agreement, and invites attention to section 23 of said agreement, which is as follows:

"Sec. 23. All Delaware Indians who are members of the Cherokee Nation shall take lands and share in the funds of the tribe, as their rights may be determined by the judgment of the Court of Claims, or by the Supreme Court if appealed, in the suit instituted therein by the Delawares against the Cherokee Nation, and now pending; but if said suit be not determined before said Commission is ready to begin the allotment of lands of the tribe as herein provided, the Commission shall cause to be segregated one hundred and fifty-seven thousand six hundred acres of land, including lands which have been selected and occupied by Delawares in conformity to the provisions of their agreement with the Cherokees dated April eighth, eighteen hundred and sixty-seven, such lands so to remain, subject to disposition according to such judgment as may be rendered in said cause; and said Commission shall thereupon proceed to the allotment of the remaining lands of the tribe as aforesaid. Said Commission shall, when final judgment is rendered, allot lands to such Delawares in conformity to the terms of the judgment and their individual rights thereunder. Nothing in this

act shall in any manner impair the rights of either party to said contract as the same may be finally determined by the court, or shall interfere with the holdings of the Delawares, until their contract with the Cherokees of April eighth, eighteen hundred and sixty-seven, under their rights under said contract are determined by the courts in their suit now pending against the Cherokees, and said suit shall be advanced on the dockets of said courts and determined at the earliest time practicable."

He states that in anticipation of the allotment of the lands of the Cherokee Nation in conformity with the provisions of section 23, the Delaware Indians through him, as their authorized attorney in fact and representative, filed with the Commission in December last a list of selections of land, aggregating about 157,600 acres as Delaware selection to be segregated in accordance with section 23 of the agreement; that certain minor errors were found in some of the descriptions; that a corrected list was forwarded to the Commission at its request in January, 1903, which said list contained the descriptions of 157,600 acres of land, and "was received, accepted, and placed on file by said Commission, as and for the Delaware lands segregated under the authority of said act."

He further states that on February 2 last a decree was entered by the Court of Claims in the case of the Delawares *v.* The Cherokees; that on March 18, 1903, an appeal was taken to the Supreme Court from the decision of the Court of Claims, and that said case is now pending in the Supreme Court of the United States; and he takes the position that the Commission to the Five Civilized Tribes exercised the authority vested in it by the Cherokee agreement in segregating the Delaware lands, has no authority or jurisdiction over the lands so segregated until final determination of the suit of the Delawares *v.* The Cherokees by the Supreme Court of the United States, and that it has "no further power to do any other act with reference to said lands."

He then states that the agreement provides that after said segregation shall have been made the Commission shall proceed to allot the remaining lands of the Cherokee tribe, and he concludes that the Commission has "no more power to receive any application for, or to perform any act concerning, any of the lands embraced within the Delaware selections than if these lands had been within the Osage Reservation, in Oklahoma, or had never been any part of the lands of the Cherokee tribe."

Mr. Adams states that recently he has received many letters and telegrams from Delaware Indians residing in the Indian Territory and occupying parts of the segregated lands, stating that they have been notified by the Commission to the Five Civilized Tribes that certain Cherokees have filed upon the lands occupied by the Delawares referred to, which lands are "within the segregated lands herein referred to, and notifying such Delawares to appear and file contests;" that this action seems to indicate that the Commission does not intend to treat the segregated lands as withdrawn from selection by the Cherokees; that if such action is carried out it will, in effect, nullify section 23 of the Cherokee agreement and deprive the Delawares of the protection which Congress intended to guarantee them by the provisions of said section; that if such action should be sustained as to one or several selections it could be sustained as to all, and there would therefore be no segregated lands; that such action would deprive the Delawares of their property rights, for the reason that they can not take their allotments at this time, and will not be allowed to do so until the case pending before the Supreme Court shall have been finally determined, and that he has been informed by the clerk of the Supreme Court that the case will probably not be disposed of for a year or more.

Mr. Adams then states that the Delaware Indians, acting under the advice of the Department, and the then Indian agent, Mr. Leo E. Bennett, spent almost all their tribal funds, which amounted to about \$1,000,000, in the improvement of their homes in the Cherokee Nation embraced in the segregation referred to by him; that they have been loyal to the United States; have been law-abiding and peaceful in the Cherokee Nation; that they deserve the protection of the Government to the fullest extent; that it was the intention of Congress to extend this protection and make it fully effective; that if the law is interpreted as it seems to have been interpreted by the Commission it will become inoperative, and he appeals to the Department to take such action in the premises as may be expedient and necessary to protect the interests of the Delaware people, and give due force and validity to section 23 of the agreement.

The Commission in its report of October 20 last, relative to the request of Mr. Walter S. Logan, attorney for the Delawares in their suit against the Cherokees, gave it as its opinion, that the law does not contemplate that such Delaware shall have an allotment of land equal to the per capita share of each Cherokee, "in addition to the allotment each such Delaware shall receive from the 157,600 acres to be segregated pending the determination of said suit, and that to adopt the contrary view in

proceeding with the Cherokee allotment would place at a serious disadvantage innumerable Cherokees, who, unlike the Delawares, have neither improved lands nor homes of their own."

It was stated by the Commission that the lands to be segregated for the Delawares should include that "occupied and improved by them, and upon which they are now living."

In said report the Commission held that it had no authority, under the law, to make allotments for Delawares of land not embraced in the segregation required by the agreement; that the allotments to the Cherokees should begin at the earliest possible date; that upon the application of any Delaware citizen there should be reserved from allotment until the determination of the Delaware-Cherokee suit such lands not embraced in the segregation, and not exceeding an amount equal to 110 acres of the average allottable land of the Cherokee Nation "as contain permanent and valuable improvements owned by such Delaware citizen."

The office concurred in the views expressed by the Commission, and recommended the approval of the Commission's report.

November 29, 1902, the Department concurred in the views expressed by the Commission and this office, and so advised Mr. Logan.

In the Commission's report of March 17, 1903, relative to the work performed during the month of February, 1903, which was transmitted with office report of March 27 last, it is stated, under the heading "Cherokee allotment division" (see p. 21), that "application for 1,673 allotments and homesteads were received during February \* \* \* The approval of 372 was withheld, because the enrollment of the applicants as citizens of the Cherokee Nation had not been finally approved by the Secretary of the Interior, \* \* \* 38 because the land applied for was embraced in the 157,600 acres of land which the Commission caused to be segregated for the Delaware Indians pending the determination of the suit instituted in the Court of Claims and in the Supreme Court, if appealed, by the Delawares against the Cherokee Nation."

From said monthly report it would appear, as stated by Mr. Adams in his communication, that the Commission to the Five Civilized Tribes has, in accordance with the provisions of section 23 of the Cherokee agreement, segregated the 157,600 acres hereinbefore mentioned.

The Commission's report of March 17, 1903, was approved by the Department on March 31 last. If the Commission had theretofore segregated said land—and from the correspondence it seems it had—the Department's approval of said report is, in effect, the approval of said segregation.

Section 23 of the Cherokee agreement specifically declares that the 157,600 acres purchased by the Delawares from the Cherokees shall be segregated from allotment if the suit hereinbefore mentioned has not been determined when the Commission shall be ready to commence making allotments in the Cherokee Nation, "so to remain subject to disposition according to such judgment as may be rendered in said case." (Italics mine.)

Section 6 of the Cherokee agreement declares that the word "select" and its various modifications shall be held to mean "the formal application at the land office to be established by the Dawes Commission for the Cherokee Nation for particular tracts of land."

When the Commission was ready to commence the allotment of the Cherokee lands, inasmuch as the Delaware-Cherokee suit had not been finally determined, it became its duty to segregate the land claimed by the Delawares. This duty was obligatory and not discretionary. The records show that the Commission did segregate said land, and the lands so segregated are not susceptible of allotment at this time, and will not be, under the law as it exists, until the pending suit shall have been finally decided.

The office does not believe that the Commission has any authority to allot any of the lands segregated during the pendency of said suit to Cherokee citizens, whether of Delaware blood or otherwise. If any citizen of the Cherokee Nation applies to the Commission for an allotment of any of the lands segregated his application, the office believes, should be rejected. The land is not susceptible of allotment, and if the Commission were to receive and file an application, and even mark it "rejected," it is possible that it would complicate matters, on account of the provisions of section 6 of the agreement, although it would seem that under the law no action of the Commission, or of any citizen of the nation, can in any way affect the segregated land until the determination of the Delaware-Cherokee suit. Cherokee citizens have the right to select any lands susceptible of allotment, not segregated, or in the possession of some citizen of the nation, as his pro rata share of Cherokee lands. If the Commission permits Cherokee citizens to select any part of the segregated land, and issues allotment certificates therefor, or even if it accepts the application, such action is

almost sure to complicate matters, especially if the suit is finally determined in favor of the Delawares. Furthermore, it would seem from the law that the Commission has no jurisdiction, at this time, of the segregated lands, so far as allotting them is concerned, and will have no jurisdiction in that capacity, as the law exists, until the suit shall have been finally determined.

Ordinarily a matter of this sort should first be referred to the Commission for consideration and report, but inasmuch as Mr. Adams states positively that the Commission has permitted Cherokee citizens to select Delaware segregated lands the Office has deemed it proper to express its views, and it is suggested that the matter be brought to the attention of the Commission, with direction not to continue to allow Cherokee citizens to select any of said lands, if it has in fact done so, until such time as it shall have been fully instructed in the premises by the Department.

It is respectfully recommended that the Commission be directed as herein suggested, and that the whole matter be referred to the Commission for early report.

Very respectfully,

A. C. TONNER, *Acting Commissioner.*

EXHIBIT 40.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,  
*Washington, April 30, 1903.*

The SECRETARY OF THE INTERIOR.

SIR: Referring to office report of April 28, 1903, relative to the Cherokee lands segregated by the Commission to the Five Civilized Tribes in accordance with the provisions of section 23 of the Cherokee agreement, there is inclosed herewith a report from the Commission, dated April 20, 1903, pertaining to the same subject.

In said report the Commission quotes section 23 of the agreement; quote from the Commission's report of October 20, 1902, as follows:

"The 157,600 acres of land to be segregated for the Delawares are to include lands heretofore selected, occupied, and improved by them and upon which all of said Delawares are living, and is set forth on page 10 of their petition in the suit now pending in the Court of Claims, as follows:

"That thereupon the said Delawares selected the said 157,600 acres of land from the said Cherokee Reservation east of line 96<sup>o</sup>, not theretofore selected or in possession of other parties, entered into the occupancy and possession of the same and made extensive and valuable improvements thereon; and they, their children, descendants, heirs at law, and personal representatives have continued to occupy and possess the said lands and the said improvements and have continued to make extensive and valuable improvements thereon and to reside thereon down to the present time."

And from Department letter of November 29, 1902, in which the Commission was advised that—

"The Department is in receipt of your report, dated October 20, 1902, in regard to a communication from Mr. Walter S. Logan concerning the suit of the Delaware Indians against the Cherokee Nation now pending in the Court of Claims.

"The Department concurs in the views expressed by your Commission and has advised Mr. Logan to that effect. The Commissioner of Indian Affairs also concurred."

It is then stated that on December 16, 1902, there was filed with the Commission an amended schedule of lands selected by the Delawares in the Cherokee Nation; that this schedule embodied the stipulation of counsel for the Delawares and Cherokees, which, omitting the title, is as follows:

"In pursuance of leave reserved and granted by the court upon the final hearing of this case it is hereby stipulated and agreed that the record herein be amended by substituting, in the place of the incorrect descriptions given in the record herein of the 157,600 acres selected and claimed by the Delawares, the annexed descriptions, which, upon careful examination, have been found correct.

"And it is further stipulated and agreed that the court may, in its decision and final judgment herein, use the annexed correct descriptions in the place of the incorrect descriptions contained in said record; provided, however, such substituted descriptions do not interfere with the lawful rights or claims of other Cherokee citizens.

"WALTER S. LOGAN, *Attorney for Petitioners.*

"WILLIAM T. HUTCHINGS, *Attorney for Respondent.*

"WASHINGTON, D. C., *December 10, 1902.*"

The report shows that on December 17, 1902, the Commission adopted the following resolution:

"*Be it resolved by the Commission,* That the acting chairman cause to be set aside and segregated 157,600 acres of land in the Cherokee Nation in accordance with the provisions of section 23 of the act of Congress approved July 1, 1902 (Public—No. 241), subject to disposition according to such judgment as may be rendered in the case of the Delaware Indians *v.* The Cherokee Nation, now pending in the United States Court of Claims, and as shown by the description of said land in the stipulation of counsel for parties in said case, dated at Washington, D. C., December 10, 1902."

The Commission states that in proceeding to carry the resolution into effect numerous errors and discrepancies were discovered in the schedule; that on January 5, 1903, the attention of Walter S. Logan and William T. Hutchings, counsel for the petitioners and respondent, respectively, was called to said errors and discrepancies. A copy of the Commission's communication of the date last mentioned is among the papers, and is marked "Exhibit A."

The report shows that on January 23, 1903, Mr. Richard C. Adams, who claims to represent the Delaware Indians, furnished the Commission with a copy of a "second amended schedule of lands selected by the Delawares in the Cherokee Nation, as per stipulation of counsel," which contains an additional stipulation by counsel, as follows:

"We agree to the corrections herein in ink on pages 2, 4, 9, 12, 14, 42, 46, 51, 54, 63, 72, 73, 74, being two corrections on pages 9, 42, 46, 63, and one on each of the other pages, subject to the above proviso."

The Commission states that the "above proviso" in the additional stipulation refers to the following: "Provided, however, such substituted descriptions do not interfere with the lawful rights or claims of other Cherokee citizens." contained in the first stipulation. A copy of Mr. Adams's letter of January 15, 1903, transmitting the second amended schedule is among the papers, and is marked "Exhibit B."

The Commission states that a comparison of the errors and discrepancies reported to the counsel for the Delawares and Cherokees, respectively, by the Commission, with the corrections made in the second amended schedule, shows that the discrepancies which counsel failed to correct pertain to lands reported by the Indian inspector for the Indian Territory to have been reserved for town-site purposes; that the Commission advised the attorneys for the contending parties that the schedule of Delaware lands "embraced 12.34 acres within the limits of the town site of Bartlesville, 12.50 acres within the limits of the town site of Lenapah, and 17.88 acres within the limits of the town site of Sallisaw," and that Mr. Adams, in his letter of January 15 last, states that—

"On page 14 we take exception to the town of Bartlesville intruding on Delaware lands. \* \* \* On page 54, which you claim that part of the selection belongs to the town of Lenapah, we do not concede this for the same reason as above; that is, we have made the selections before the town was surveyed, \* \* \* and on pages 73 and 74 we contend that our rights to this land are older and better than the rights of the town of Sallisaw."

It is then stated that since the opening of the Cherokee allotment office at Vinita, on January 1 last, a number of Cherokee citizens have made applications for allotments of lands embraced wholly or in part in the segregation made for the Delawares; that such citizens, in many instances, claim to have been in possession of the lands applied for for years, and to own valuable improvements on the same, and that no Delaware citizen has ever occupied such lands or owned any improvements thereon; that action on this class of applications has been deferred pending the determination of the Delaware-Cherokee suit, and attention is invited to Mr. Adams's communication of April 7, 1903, a copy of which is among the papers, and marked "Exhibit C," wherein he states:

"My understanding is that the 157,600 acres of land is segregated and that no Cherokee will be allowed to file on this land or to receive allotment out of it until the Supreme Court has finally passed upon the rights of the Delaware Indians."

A copy of a letter from Mr. Adams to the same effect, dated April 10, 1903, is among the papers, and marked "Exhibit D."

The Commission states that from Mr. Adams's communication it "appears that notwithstanding the proviso in the stipulation of counsel that the substituted descriptions are not to interfere with the lawful rights or claims of other Cherokee citizens, the Delawares, through Mr. Adams, take the position that if the decision of the Supreme Court is favorable to them, the specific 157,600 acres described in the record of the case will vest absolutely in the Delawares, notwithstanding any claims which other Cherokee citizens may make to portions of the same lands;" that in addition to the contention of the Delawares for the lands embraced within the limits of the town sites mentioned, and for lands claimed "and in the possession of other Cherokee citizens," a serious situation with reference to the Delaware segregation

has developed in the work of allotment; that not a few Delaware citizens have presented themselves at the land office and asked to be allowed to make final selections of lands containing their improvements, and upon which they reside, claiming that no portion of the lands occupied by them is included in the segregation; that the Commission has been informally advised "of cases of numerous other Delaware citizens whose improved lands are not included within said segregation, and the statement has been frequently made that the representative of the Delaware Indians, or their business committee, refused to schedule for segregation the lands of any Delaware citizen who failed to pay a pro rata share of the fee which said representatives or committee demanded;" that the extent of the condition of affairs last mentioned is indicated by the correspondence had with Mr. William Nairn, copies of which are among the papers, marked "Exhibit E;" that it is evident that while lands occupied by Delaware citizens have not been included in the schedule of lands made a part of the record in the suit commenced by the Delawares, "an amount of the public domain of the Cherokee Nation sufficient to bring the total segregation up to 157,600 acres has been included," and the Commission forwarded copies of the correspondence of the clerk in charge of the Cherokee land office at Vinita, which copies are marked Exhibits "F" and "G," and show that since the segregation of the lands for the Delawares "by this Commission, on December 17, 1902," the Department has fixed the exterior limits of the town sites of North Tulsa and Lawton, in the Cherokee Nation, which embrace 20 and 25 acres, respectively, of the amount theretofore included in the Delaware segregation; that under the circumstances the Commission believes that the land embraced in the original schedule, and in the first and second amended schedules, made a part of the record in the Delaware case, have not been selected with due regard for the interests of either the Delaware citizens, generally, or other citizens of the Cherokee Nation, and without any intention of conforming to the laws pertaining to the establishment of town sites.

The Commission inclosed with its report a copy of a communication addressed to Hon. M. S. Quay, United States Senator from Pennsylvania, by Mr. Adams, on April 10, 1903, which was referred to the Commission by Senator Quay. Said copy is marked "Exhibit H." Mr. Adams's communication of April 10, 1903, to Senator Quay, is almost identical with his letter of April 18, 1903, which was forwarded to the Department with office report of April 28, 1903. In this communication he takes the position that the Commission is without jurisdiction to receive applications of Cherokee citizens for lands embraced within the Delaware segregation, and the Commission states that this position is taken "notwithstanding the proviso of counsel in the stipulation hereinbefore set forth providing for the protection of the property rights of other Cherokee citizens."

The Commission believes that steps should be taken by the Department to guard against the possibility of the Supreme Court, in rendering judgment in said case, adopting the schedule "as the definite and specific tracts of land to which the Delawares are entitled under their claim," and requests that the Department issue such instructions as may be deemed proper in the premises.

From the papers before this office it appears that the Commission has segregated lands for the Delawares, if any segregation has been made, in accordance with schedules furnished it by Mr. Adams.

December 17, 1902, the Commission adopted a resolution authorizing and empowering the then acting chairman to segregate the Delaware lands as required by the Cherokee agreement.

The Commission stated in its report of March 17, 1903, relative to the Commission's work during the month of February, that the lands had been segregated, and it appears that the Commission considers that the lands were segregated as of date of December 17, 1902, the day the resolution was adopted, although the Commission's report shows that it accepted the second amended schedule from Mr. Adams on January 23, 1903. There is nothing in the papers which shows that the Commission, or the present chairman of the Commission, in accordance with the resolution of December 17 last, segregated the lands referred to except the Commission's communication of January 5, 1903, addressed to Walter S. Logan and William T. Hutchings, a copy of which is among the papers. In that communication it is stated that "the Commission has segregated and reserved from allotment, subject to disposition according to such judgment as may be rendered in said cause, 157,541.74 acres of land in the Cherokee Nation, the same being the land described in said stipulation less 60 acres," accounted for as indicated in the Commission's communication.

The Commission's report and other papers do not show that the chairman of the Commission actually segregated the land in accordance with said resolution, and that his action was approved by the Commission. It seems that the Commission did not investigate the matter and ascertain whether the lands it segregated, or proposed to segregate, were "lands which have been selected and occupied by Delawares in conformity to the provisions of their agreement with the Cherokees" of



April 8, 1867, but that it simply took the schedule or schedules furnished it by Mr. Adams, and that the segregation was made, if any has been made, in accordance with such schedule or schedules, without investigation as to whether the lands described therein were susceptible of segregation in accordance with the provisions of law. It seems to this Office that the Commission should have first segregated all lands "which have been selected and occupied by Delawares," and if the total amount segregated did not aggregate the required amount, then segregate from the public domain lands sufficient to make 157,600 acres. If the Delaware Indians had "selected and occupied" more than 157,600 acres, the aggregate amount of the lands selected and occupied by them should have been reduced, so that the total would not exceed 157,600 acres. This segregation, the Office believes, should have been made by the Commission from its own records and proper investigation, and not from the schedule or schedules furnished it by Mr. Adams or anyone else representing the Delawares. The schedule or schedules furnished by Mr. Adams could have been used by the Commission in connection with the making of the segregation, but the Commission should not have simply segregated the lands which he requested be segregated without proper investigation.

From the Commission's report it appears that the Commission segregated the lands that Mr. Adams requested be segregated, and it seems and in fact the Commission states, that the lands purported to have been segregated do not include all of the lands "selected and occupied by Delawares."

The records of this Office do not show that the Department has been furnished with the legal description of the lands alleged to have been segregated by the Commission. It seems to the Office that the Commission should, as soon as the lands was segregated, have furnished the Department with a list of the segregated lands.

With reference to the town sites the records of this Office show that the establishment of the exterior limits of Bartlesville was approved March 13, 1902, that the establishment of the exterior limits of Lenapah was approved March 5, 1902, and that the establishment of the exterior limits of Sallisaw was approved May 15, 1902.

At the time that the establishment of the exterior limits of the towns above-mentioned was approved by the Department the Delaware lands had not been segregated, and the Office believes that, under the provisions of the Cherokee agreement, lands not specifically segregated for any particular purpose were susceptible of being set aside for town-site purposes. It therefore believes that Mr. Adams's contention relative to the Department's not having authority to segregate the lands referred to by him, for town-site purposes, is untenable.

August 15, 1902, the Department authorized the inspector for the Indian Territory to properly establish the exterior limits of the town of Lawton. This was prior to the purported segregation of Delaware lands on December 16 last, and the remarks relative to Bartlesville and the other towns above mentioned are applicable to Lawton.

The establishment of the exterior limits of North Tulsa was approved by the Department January 21, 1903, which was subsequent to the alleged segregation of Delaware lands. If the Delaware lands have been segregated, as the Commission holds, it is doubtful whether any of the lands should have been included within the limits of the town, as it seems that it was the intention of Congress that the segregated lands be not in any way disturbed after segregation, until the Delaware-Cherokee suit shall have been finally determined. The Commission seems to be of the opinion that on account of the stipulation signed by the attorneys for the parties to the litigation, which is in part as follows, "Provided, however, such substituted descriptions do not interfere with the lawful rights or claims of other Cherokee citizens," its jurisdiction to allot to Cherokees, or at least to receive and file application for allotment, covers segregated lands.

The Commission's report of March 17, 1903, relative to the work performed by it during the month of February, 1903, shows that 38 applications for allotments were not approved "because the land applied for was embraced in the 157,600 acres of land which the Commission caused to be segregated for the Delaware Indians," and its report of April 16, 1903, relative to the work performed by it during the month of March, 1903, which has this day been transmitted, shows that 57 applications for allotments have not been approved for the same reason. This Office does not understand that the Commission has any jurisdiction of the segregated lands, after the segregation shall have been made, until such time as the court shall have finally decided the same. The law specifically declares that the lands shall be segregated, and that when segregated "such lands so to remain" until the final determination of the cause, and requires the Commission to allot "the remaining lands of the tribe as aforesaid."

The fact that the attorneys for the contending parties have signed a stipulation agreeing that the lands segregated shall not "interfere with the lawful rights or claims of other Cherokee citizens" does not in any manner whatever nullify or

modify the law. The law is directory, and the Commission has no discretionary power in the premises. If the 157,600 acres have been segregated the Office does not believe that the Commission should, until after the determination of the suit, permit any citizen of the nation to even file an application selecting any of the segregated lands as his allotment.

If any error has been made by the Commission in segregating lands lawfully in the possession of Cherokee citizens not of Delaware blood, the error should be corrected; and after this has been done Cherokee citizens, whether of Delaware blood or otherwise, should not be permitted to file an application covering any of the segregated lands pending the determination of the case. It is thought that during said time the Commission should not even receive and file applications covering segregated lands. Applicants should, the Office believes, be advised that the Commission is without jurisdiction to allot or to receive an application covering any of such lands during the pendency of the suit.

The Commission's reports for the months of February and March show that it has received 95 applications covering lands alleged to have been segregated in accordance with section 23 of the agreement. To continue such applications will only be the means of complicating matters and fostering contests.

The Commission seems to be of the opinion that the Supreme Court of the United States may, in deciding the Delaware suit, approve a certain schedule, which seems to be a part of the record in the case, and expresses the opinion that steps should be taken to prevent such action by the court. This Office does not understand that the court has authority to approve such schedule. The province of the court seems to be to decide the questions involved, and to determine what interests the Delaware citizens have in the Cherokee lands; and it is the duty of the Commission, and not of the court, to segregate the 157,600 acres. However, it is believed that the Commission should furnish the Department with legal descriptions of the tracts segregated, if such segregation has been made, for its information and for such action, with reference to bringing the matter to the attention of the court, as the Department may consider proper.

If the Department shall hold that the Commission has segregated the 157,600 acres of land, it is suggested that the Commission be advised in accordance herewith; but if the Department shall hold that the land has not been segregated, it is thought that the Commission should be instructed to immediately segregate from allotment, "so to remain" until the final determination of the cause, 157,600 acres of land, the same to include "lands which have been selected and occupied by Delawares in conformity with the agreement of April 8, 1867."

As above stated, the Office believes that the Department has full power and authority to segregate any Cherokee lands for town-site purposes, regardless of whether occupied by Delaware citizens or any other citizen of the Cherokee Nation prior to the alleged Delaware segregation of December 17 last; and, as part of the Delaware segregation is included within the limits of town sites, it is thought that the Commission should be instructed to segregate from the public domain or lands in possession of Delaware citizens, if all of such lands have not been segregated, additional lands in an amount equal to the Delaware segregation included within the limits of the town sites above mentioned, except North Tulsa.

If the Delaware lands were segregated on December 17, 1902, and were not after that date susceptible of allotment during the pendency of the suit, or subject to being reserved for town-site purposes after the segregation, it would seem that the Department's action in setting aside 20 acres of the Delaware segregation for town-site purposes in the town of North Tulsa should be reconsidered, and that the 20 acres mentioned should not be included within the limits of the town site.

The records of this Office and the Commission's report do not show that the inspector for the Indian Territory had been advised of the alleged segregation of Delaware lands. If he had been so advised, it is not probable that he would have recommended that 20 acres of such lands be included within the limits of the town of North Tulsa, at least without bringing the matter to the attention of the Department.

Very respectfully,

A. C. TONNER, *Acting Commissioner.*

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EXHIBIT 41.

*Extract from the report of the Commission to the Five Civilized Tribes, dated May 16, 1903.*

THE SECRETARY OF THE INTERIOR.

SIR: We have the honor to submit herewith the following statement of the work of the Commission to the Five Civilized Tribes for the month of April, 1903:

\* \* \* \* \*

## CHEROKEE ALLOTMENT DIVISION.

Approximately 1,000 tickets of admission to the Cherokee land office were issued during the month of April, making a total of 7,800 issued since the office was established on January 1, 1903. Of this number 300 were issued to fullblood Cherokees, and entitled the holders to appear at the land office at any time and make applications for their allotments. Of the 7,800 tickets issued, approximately 2,500 have been presented at the land office.

Applications for 2,384 allotments and homesteads were received during April. Of this number 1,518 were approved. The approval of 637 was withheld because the enrollment of the applicants as citizens of the Cherokee Nation had not been finally approved by the Secretary of the Interior; 154 because the land applied for had already been allotted; 63 because the land applied for was embraced in the 157,600 acres of land which the Commission caused to be segregated for the Delaware Indians, and 12 because the land applied for was embraced in various tentative reservations theretofore made.

During the month of April, 1903, 149,715.61 acres of land, valued at \$532,187.06, were allotted to citizens of the Cherokee Nation.

Approximately 750 allotment certificates and an equal number of homestead certificates have been written, and as soon as the allotments have been shown thereon in color will be forwarded to the applicants.

Five hundred allotment certificates and an equal number of homestead certificates which had been executed by the Commission were forwarded to the allottees in such cases as contest had not been entered or other objection found to exist.

Conformable to the plan theretofore advertised throughout the Cherokee Nation, the land office was, on April 30, removed from Vinita to Tahlequah, Ind. T., there to be maintained indefinitely.

During the period of four months that the Cherokee land office was located at Vinita, Ind. T., allotments were made to 6,813 persons. A number of the applicants presented themselves a second time and applied for additional lands, making a total of 7,987 applications for allotments received at Vinita. Of this number 5,293 were approved. The approval of 2,148 was withheld because the enrollment of the applicants as citizens of the Cherokee Nation had not been finally approved by the Secretary of the Interior; 343 because the land applied for had already been allotted to other citizens; 176 because the land applied for was embraced in the 157,600 acres of land which the Commission caused to be segregated for the Delaware Indians pending the final determination of the suit instituted by the Delawares against the Cherokee Nation, and 27 because the land applied for was embraced in tentative reservations theretofore made for certain towns and other purposes in the Cherokee Nation.

## ALLOTMENT-CONTEST DIVISION.

The progress of the work in the allotment-contest division during the month of April and the condition of contested allotment cases at the close of the month, as indicated by the records of that division, are shown by the following detailed statement:

|   |   |   |   |   |     |       |
|---|---|---|---|---|-----|-------|
| *   | * | * | * | * | *   | *     |
| <i>Cherokee Nation.</i>                               |   |   |   |   |     |       |
| Contests instituted prior to April 1 .....            |   |   |   |   |     | 22    |
| Complaints filed during April .....                   |   |   |   |   | 120 |       |
| Complaints returned for correction during April.....  |   |   |   |   | 27  |       |
|   |   |   |   |   |     | <hr/> |
| Contests instituted during April.....                 |   |   |   |   |     | 93    |
|   |   |   |   |   |     | <hr/> |
| Total .....   |   |   |   |   |     | 115   |
|   |   |   |   |   |     | <hr/> |
| Contest disposed of prior to April 1.....             |   |   |   |   |     | 1     |
| Contest disposed of during April .....                |   |   |   |   |     | 1     |
| Contests pending before the Commission April 30 ..... |   |   |   |   |     | 112   |
| Contest pending before the Department April 30.....   |   |   |   |   |     | 1     |
|   |   |   |   |   |     | <hr/> |
| Total .....   |   |   |   |   |     | 115   |

The condition of the 112 Cherokee contest cases pending before the Commission on April 30 was as follows:

|   |    |
|---|----|
| Set for trial .....                               | 46 |
| Awaiting final determination of citizenship ..... | 23 |

|  |            |
|--|------------|
| Involved in Delaware segregation .....         | 6          |
| Awaiting action on complaint .....             | 27         |
| Awaiting decision .....                        | 8          |
| Awaiting issuance of notice of dismissal ..... | 1          |
| Continued indefinitely .....                   | 1          |
| <b>Total .....</b>                             | <b>112</b> |

The Cherokee case pending before the Department on April 30 was awaiting action of the Department as to ordering a hearing on the complaint. \* \* \*

Respectfully submitted.

TAMS BINBY, *Chairman*,  
 T. B. NEEDLES, *Commissioner*,  
 C. R. BRECKINRIDGE, *Commissioner*,  
 \_\_\_\_\_, *Commissioner*.

(Through the Commissioner of Indian Affairs.)

EXHIBIT 42.

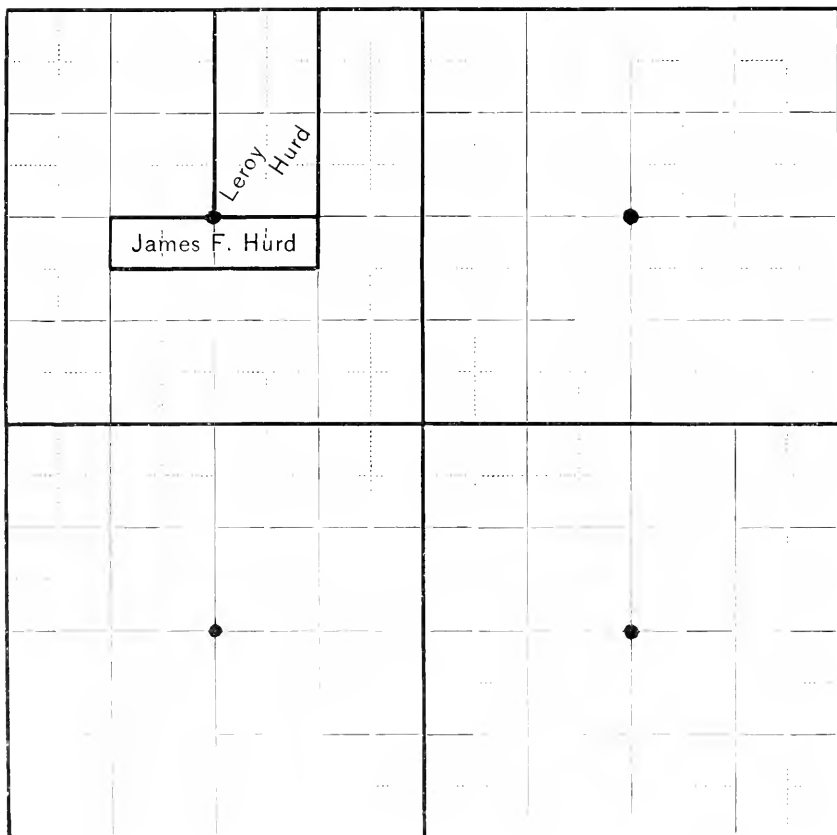
DEPARTMENT OF THE INTERIOR,  
 COMMISSION TO THE FIVE CIVILIZED TRIBES.

CHEROKEE LAND OFFICE.

Sec. 32.

Township No. 25 N., range No. 19 E.

Sec. —.



Sec. —.

Sec. —.

All land filed is embraced in Delaware segregation.

## EXHIBIT 43.

COMMISSION TO THE FIVE CIVILIZED TRIBES,

*Tahlequah, Ind. T., May 20, 1903.*JOHN H. SECONDINE, *Whiteoak, Ind. T.*

DEAR SIR: The Commission is in receipt of your letter of May 10, also your letter of May 12, complaining that certain land which you hold as allotments in the Cherokee Nation for yourself and family, and which is a part of the 157,600 acres of land segregated for the Delaware Indians, has been filed on by one George Hurd. You ask to be advised just what land George Hurd has filed on in township 25 north, range 19 east of the Indian meridian, and how your rights are to be protected in view of the fact that you yourself are a Delaware citizen of the Cherokee Nation and not permitted to make application for land embraced in the Delaware segregation.

The records of the Commission show that you are regularly listed for enrollment as a Delaware citizen of the Cherokee Nation, but that your wife and children are enrolled as Cherokees by blood.

There is inclosed you herewith a plat showing the land filed on by George Hurd for Leroy and James F. Hurd. The land shown on this plat lies in the Delaware segregation and no final allotment of same will be made until the suit now pending to determine the rights of Delaware citizens of the Cherokee Nation, has been determined.

If this land is a part of the allotment which you propose to select for your wife, you are advised that you can appear before the Cherokee land office at the earliest possible date and make application for the allotment of the land in question, with a view to beginning contest proceedings therefor.

If it is a part of the land which you propose to select for yourself or children, you are advised that, while the Commission has no authority to refuse to receive a contest complaint in any case, or to refuse to consider such complaint when the same is properly filed before it, has, however, authority to deny a hearing of a complaint when the case is deemed insufficient, or to hold the contest open pending the determination of some collateral question involving the land in controversy, or the citizenship of the parties, when such action is thought advisable.

Respectfully,

C. R. BRECKINRIDGE,

*Commissioner in charge Cherokee Land Office.*

## EXHIBIT 44.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,

*Washington, June 4, 1903.*

THE SECRETARY OF THE INTERIOR.

SIR: I have the honor to transmit herewith report of the Commission to the Five Civilized Tribes of its work accomplished during the month of April, 1903. I recommend that the report be approved.

Very respectfully,

A. C. TONNER, *Acting Commissioner.*

## EXHIBIT 45.

DEPARTMENT OF THE INTERIOR,

*Washington, June 6, 1903.*

THE COMMISSIONER OF INDIAN AFFAIRS.

SIR: Referring to the Acting Commissioner's communication of June 4, 1903, there is inclosed departmental letter to be forwarded to the Commission to the Five Civilized Tribes, approving, as recommended by the Acting Commissioner, its report of work done during the month of April, 1903, by the Commission.

By departmental letter of December 22, 1900, your attention was invited to the statement in the Commission's monthly report for November, 1900, as to the number of contests pending on appeal, and it was stated that "the Department desires that hereafter your office should report upon the status of the appeals and other matters transmitted by the Commission for the consideration of the Department when you transmit the report of the Commission."

You are requested to make a report, as heretofore directed, upon the matters contained in said report of the Commission concerning the status of appeals, etc.

Respectfully,

THOS. RYAN, *Acting Secretary*

## EXHIBIT 46.

In the supreme court of the District of Columbia. Holding an equity court. George Bullette, Henry Armstrong, John H. Secordyne, John Young, John Sarcoux, jr., and Richard C. Adams, on their behalf and on behalf of the Delaware tribe of Indians, residing in the Indian Territory, and George Bullette, Henry Armstrong, John Young, and John Sarcoux, jr., a business committee duly appointed by the members of the tribe of Delaware Indians, complainants, *v.* Ethan Allen Hitchcock, Secretary of the Interior, and Tams Bixby, Thomas B. Needles, Clifton R. Breckenridge, and William E. Stanley, members of and composing the Commission to the Five Civilized Tribes, defendants. In equity, No. 23991.

*Answer of the defendant, Ethan Allen Hitchcock, as Secretary of the Interior, to the bill of complaint.*

The defendant, Ethan Allen Hitchcock, as Secretary of the Interior, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained for answer thereunto, or to so much of such parts thereof as this defendant is advised is material for him to make answer unto, answers and says:

I. This defendant neither admits nor denies the allegations of the first paragraph of the bill of complaint, and calls for strict proof thereof.

II. This defendant admits the allegation of the second paragraph of the bill of complaint.

III. This defendant denies that the Delaware Indians are a band of the Cherokee tribe or nation, or that since the 8th day of April, 1867, they have preserved their tribal organization, or have maintained their tribal laws, customs, and usages, as set forth in the third paragraph of the bill of complaint, but admits that said Delaware Indians, as individuals, became and are citizens of the Cherokee Nation, by virtue of the agreement of April 8, 1867.

IV. This defendant, answering the allegations set forth in the fourth paragraph of the bill of complaint, denies that an agreement was entered into by and between the Cherokee Nation of Indians and the Delaware tribe of Indians, then living in Kansas, whereby said Cherokee Nation sold to the Delawares an amount of land east of the ninety-sixth degree, as alleged in said paragraph four; and further answering the allegations set forth in said paragraph, he alleges that on the 8th day of April, 1867, the Cherokee Nation agreed to sell to the Delawares, for their occupancy, the quantity of land named in said paragraph, upon the terms and conditions therein set forth; and further answering the allegations set forth in said paragraph, defendant admits each and every one of them not heretofore denied; and further answering the allegations set forth in said paragraph, this defendant further alleges that the said 157,600 acres of land mentioned and described in said paragraph has not been set apart or segregated.

V. This defendant admits the allegations set forth in the fifth paragraph of the bill of complaint.

VI. This defendant, answering the allegations set forth in the sixth paragraph of the bill of complaint, alleges that there has been no segregation of the 157,600 acres of land mentioned and described therein, and as to the other allegations set forth in said paragraph, the same are admitted.

VII, VIII, and IX. This defendant admits the allegations set forth in the seventh, eighth and ninth paragraphs of the bill of complaint.

X. This defendant, answering the allegations set forth in the tenth paragraph of the bill of complaint, alleges that by section 22 of the act of June 1, 1902 (32 Stat. L., 716, 718), exclusive jurisdiction is conferred upon the Commission to the Five Civilized Tribes, under the direction of the Secretary of the Interior, to determine all matters relative to the appraisement and allotment of the lands in said act provided for; and this defendant, further answering the allegations set forth in said paragraph, admits that under section 69 of said act, after the expiration of nine months from the date of the original selection of any allotment by or for any Cherokee citizen, no contest should be instituted against such selection, and that as early thereafter as practicable a patent should be therefor.

XI and XII. This defendant is advised by counsel that the allegations set forth in the eleventh and twelfth paragraphs of said bill of complaint are matters of law, and not necessary to be answered.

XIII. This defendant, answering the allegations set forth in the thirteenth paragraph of the bill of complaint, alleges as follows: That on December 16, 1902, there was filed with the Commission to the Five Civilized Tribes a list or schedule of lands

aggregating 157,600 acres, alleged to have been theretofore selected by the Delaware Indians and claimed by them under their agreement with the Cherokee Nation dated April 8, 1867; that thereafter, and on December 17, 1902, said Commission, by resolution, instructed Tams Bixby, defendant herein, and who was at the time acting chairman of said Commission, to cause to be set aside and segregated the lands designated and described in said list or schedule; that thereafter, and in compliance with said resolution, said defendant Bixby, as acting chairman of the said Commission, caused the tracts described in said schedule to be marked on maps or plats of lands within the Cherokee Nation, on file in the office of the Commission, as set aside under said section 23 of the act of July 1, 1902; that thereafter, and upon further examination, the said Commission to the Five Civilized Tribes discovered numerous errors in said list or schedule and called the attention thereto of the person who had theretofore filed the same; that thereafter, and on January 23, 1903, the said Commission received from a person claiming to be a representative of the Delaware tribe of Indians an alleged corrected list or schedule of lands selected by them, aggregating about 157,600 acres, in the Cherokee Nation; that thereafter the list or schedule filed on December 16, 1902, was corrected to correspond with the list or schedule as filed on January 23, 1903, and said corrected list or schedule was accepted by said Commission as a proper designation of the lands to be selected and segregated under the provisions of said section 23 of the act aforesaid; that thereafter a number of Cherokee citizens not Delawares complained to the Commission that the list or schedule so corrected embraced a large quantity of lands which had theretofore been in their possession and upon which they had made improvements and which had not been occupied or improved by the Delawares or any of them; that since the filing of said list or schedule as corrected a number of Delaware Indians have made complaint to the Commission that said corrected list or schedule did not include lands which had theretofore been selected and occupied by them, and thereupon made request to the Commission to be allowed to make final selections of lands containing improvements upon which they resided and which were not included in said corrected list or schedule; that since the acceptance of said corrected list or schedule the Commission has discovered that it includes lands which were by law reserved for town site and other purposes, and not subject to be set apart and segregated under the provisions of said section 23.

This defendant further alleges that the lands designated and described in the aforesaid corrected list or schedule were not selected with due regard for either the Delaware citizens generally or other citizens of the Cherokee Nation, and that said corrected list or schedule embraces lands which by law are reserved for town site and other purposes under the provisions of section 24 of the aforesaid act of July 1, 1902. This defendant further alleges that on April 20, 1903, the Commission made report of its acts and proceedings with respect to the filing and acceptance of the aforesaid list or schedule of lands to the Secretary of the Interior for his approval, which report was received by the defendant as Secretary of the Interior on April 30, 1903, and has not been fully considered by him, nor have the acts and proceedings of the Commission, as set forth in this paragraph of the answer of this defendant, received his approval as Secretary of the Interior; neither has he accepted or approved said corrected list or schedule as a proper description and designation of the lands required by said section 23 to be segregated.

XIV. This defendant is advised by counsel that the allegations set forth in the fourteenth paragraph of the bill of complaint are matters of law, and not necessary to be answered.

XV. Answering the allegations as set forth in the fifteenth paragraph of the bill of complaint, this defendant denies that the Commission to the Five Civilized Tribes now claims to have the right to receive applications for the allotment of lands designated and described in the lists referred to in paragraph 13 of the bill of complaint, or now claims to have the right, upon the filing of any such applications, to consider that the individual Delawares are barred and foreclosed of any interest in the 157,600 acres of land to be segregated by section 23 of the act of Congress of July 1, 1902.

XVI. This defendant admits that the suit referred to in paragraph 16 of the bill of complaint is pending in the Supreme Court of the United States, and denies each and every other allegation in said paragraph.

XVII. This defendant denies that the Commission and the Secretary of the Interior, or either of them, has disregarded any protest made to them or to either of them by the Delaware Indians, or any agent thereof, as alleged and set forth in the seventeenth paragraph of the bill of complaint, and alleges that all protests made to said Commission and to the Secretary were being considered by this defendant, as Secretary of the Interior, in connection with the acts and proceedings of said Commission under said section 23 of the act of July 1, 1902, at the time of the filing of

the bill of complaint herein, and that appropriate action thereon and on such acts and proceedings of said Commission has not been taken because of the issuance of the temporary restraining order herein.

XVIII. This defendant is advised by counsel that the allegations set forth in the eighteenth paragraph of the bill of complaint are matters of law, and not necessary to be answered.

XIX. For answer to the nineteenth paragraph of the bill of complaint this defendant alleges that there has been no segregation of the 157,600 acres of land, and in this connection refers to paragraph thirteen of this answer. He denies that the said Commission has done any acts to interfere with or prejudice the rights of the complainants, or either of them, to any lands in the Cherokee Nation to which they are entitled, or that he, as such Secretary of the Interior, has done any acts or threatened to do any acts which in any way interfere with or prejudice the rights of the complainants, or either of them, to any of the lands claimed by them in the Cherokee Nation.

XX. With respect to the allegations set forth in the twentieth paragraph of the bill of complaint, this defendant says that when the segregation of lands provided for in section 23 of said act of July 1, 1902, is made and approved, no allotments will be made of any lands included in said segregation until the suit mentioned in said section 23 is finally determined, nor will any action be taken by said Commission, or by this defendant as Secretary of the Interior, which will in any way prejudice the rights of the Delaware Indians to the lands included in said segregation.

XXI. This defendant, answering the allegations set forth in the twenty-first paragraph of the bill of complaint, alleges that he has not sufficient knowledge or information upon which to base a belief as to the truth of said allegations, and therefore denies the same.

XXII and XXIII. This defendant is advised by counsel that the allegations set forth in the twenty-second and twenty-third paragraphs of the bill of complaint are matters of law, and not necessary to be answered.

XXIV. Answering the allegations set forth in the twenty-fourth paragraph of the bill of complaint, this defendant denies that any acts of said Commission, or of this defendant as such Secretary of the Interior, have caused or will cause a multiplicity of suits, or have caused or will cause any loss, inconvenience, or damage whatever to the complainants, or any of them.

XXV. Answering the allegations set forth in the twenty-fifth paragraph of the bill of complaint, this defendant alleges, as he has heretofore alleged in the thirteenth paragraph of this answer, that no segregation as required by law has been made. And further answering the allegation set forth in said paragraph, this defendant denies that the Commission has unlawfully permitted an application to be filed with respect to the lands claimed by Richard C. Adams, or that any contest has been initiated with respect to the same. And this defendant further alleges that if any person or persons have gone upon, taken possession of, or committed acts of trespass or waste with respect to any lands claimed by said Richard C. Adams, or threatened injury to said lands and premises claimed by him, such acts and proceedings upon the part of third persons have been done and performed without the knowledge and consent of this defendant or of said Commission.

XXVI. Answering the twenty-sixth paragraph of the bill of complaint, this defendant alleges, as he has heretofore alleged in the thirteenth paragraph hereof, that no segregation of 157,600 acres of land has been made as required by law.

XXVII. Answering the allegations as set forth in paragraph 26½ of the bill of complaint, this defendant admits that by the several acts of Congress creating and defining the powers of the Commission to the Five Civilized Tribes, and all the acts and proceedings of said Commission under said laws, are subject to the direction of the Secretary of the Interior; and this defendant denies that the acts and proceedings of the Commission with respect to said lists or schedules of land received, by said Commission as heretofore mentioned, were done by the direction and with the approval of this defendant as such Secretary of the Interior.

XXVIII, XXVIII, and XXIX. This defendant is advised by counsel that the allegations set forth in the twenty-seventh, twenty-eighth, and twenty-ninth paragraphs of the bill of complaint have all been sufficiently answered.

And further answering the bill of complaint, this defendant, as such Secretary of the Interior, alleges that this defendant, as such Secretary of the Interior, and the Commission to the Five Civilized Tribes of Indians constitute a special tribunal whose duty it is to segregate and allot the lands in the Cherokee Nation; that the performance of this duty requires upon the part of said tribunal the exercise of judgment and discretion; that the segregation provided for in section 23 of the act aforesaid, before it is complete or effective, must be approved by this defendant as



such Secretary of the Interior; that this duty involves upon his part as such Secretary the exercise of judgment and discretion, and is not, as he is advised, subject to review, control, or interference by the judicial branch of the Government in injunction proceedings; and this defendant prays the same benefit of his defense as if he had formally demurred to the bill upon the ground thereof; all which matters and things in this answer contained this defendant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

E. A. HITCHCOCK,  
*Secretary of the Interior.*

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*Solicitor for Defendant, Ethan Allen Hitchcock.*

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UNITED STATES OF AMERICA, *District of Columbia, ss:*

Ethan Allen Hitchcock, being duly sworn, deposes and says, that he has read the foregoing answer subscribed by him and knows the contents thereof; that the facts therein stated of his own knowledge are true, and those stated upon information and belief he believes to be true.

E. A. HITCHCOCK.

Subscribed and sworn to before me this 19th day of June, 1903.

[NOTARIAL SEAL.]

W. BERTRAND ACKER,  
*Notary Public in and for the District of Columbia.*

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EXHIBIT 47.

In the supreme court of the District of Columbia. George Bullette et als., complainants, *v.* Ethan Allen Hitchcock, Secretary of the Interior, et als., defendants. In equity, No. 23991.

Now come the complainants and by their solicitors move the court for leave to amend their bill of complaint by adding to Paragraph XIII thereof the following averments:

That the acts and proceedings of said Commission and of the Commissioner of Indian Affairs and of the defendant, the Secretary of the Interior, in the administration and execution of the provisions of said section 23 of said act of Congress are fully set forth in the report of the said Commission dated October 20, 1902, and in the report of the Commissioner of Indian Affairs dated November 22, 1902, and in the letter of the defendant, the Secretary of the Interior, relating thereto, dated November 29, 1902, and in the report of said Commission dated March 17, 1903, and in the report of the Commissioner of Indian Affairs dated March 27, 1903, and in the letter of the defendant, the Secretary of the Interior, relative thereto, dated March 31, 1903, and in the report of said Commission dated April 20, 1903, and in the reports of the Commissioner of Indian Affairs dated April 28 and April 30, 1903, copies of which reports and letters (except those dated respectively March 17, March 27, and March 31, which the complainants have not been able to obtain) are filed herewith and made part hereof, and are marked respectively Delaware Exhibits "A," "B," "C," "D," "E," and "F."

That it appears from said reports and letters and the fact is that the segregation of said 157,600 acres of land was made and completed by said Commission as required by the provisions of said section 23 in the month of December, 1902, and was held and considered by the said Commission and by the Secretary of the Interior as having been made and completed by said Commission and by the Secretary of the Interior, and was in fact then approved and considered to have been approved by the Secretary of the Interior, and thereupon, and after said segregation had been made, and because it was held by the Secretary of the Interior to have been made in compliance with the law, the said Commission proceeded, under the direction and with the approval of the defendant, the Secretary of the Interior, to the allotment of the remaining lands as authorized and required by said act, and on or about the 1st of January, 1903, said Commission opened the land office at Vinita, Ind. T., for the purpose of receiving applications from Cherokees for lands other than those so segregated and making allotments therefor; that after said land office was opened as

aforsaid—during the months of January and February, 1903—more than 1,600 applications were filed and more than 1,300 allotments were made and reported and the report thereof approved by the defendant, the Secretary of the Interior; that said office continued open until the time of filing this suit—in June, 1903—during which time more than 8,000 applications, covering more than 800,000 acres of land, were made, and more than 5,000 allotments, covering over 500,000 acres of land, were reported, and the records thereof were approved by the defendant, the Secretary of the Interior.

And that the approval of said allotments was based upon and followed the segregation of said land as aforsaid and could not have been legally made, and would not have been, and would not be valid if said segregation has not been made as required by the terms of said section 23 as preliminary and as a prerequisite to the making of said allotments.

WALTER S. LOGAN,  
NATHANIEL WILSON,  
GEORGE S. CHASE,  
*Solicitors.*

DISTRICT OF COLUMBIA, ss:

Richard C. Adams, being first duly sworn, deposes and says that he has read the foregoing and proposed amendment to the bill of complaint in the above-entitled case; that the facts therein stated as of his own knowledge are true, and those stated on information, derived from others, he believes to be true.

RICHARD C. ADAMS.

Subscribed and sworn to before me this 23d day of June, A. D. 1903.

GEORGE F. GRAHAM,  
*Notary Public, District Columbia.*

Notice to Morgan H. Beach of calling up motion Friday, June 26, 1903, at 10 o'clock, before Mr. Justice Anderson.

#### EXHIBIT 48.

In the supreme court of the District of Columbia, George Bullette et al., complainants, *v.* Ethan Allen Hitchcock, Secretary of the Interior et al., defendants. In equity, No. 23991.

*Answer of defendant, Ethan Allen Hitchcock, to the amendment to the bill of complaint.*

Comes now the defendant, Ethan Allen Hitchcock, as Secretary of the Interior, and, saying and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the amendment to the complainants' bill of complaint, for answer thereto, or to so much of such parts thereof as he is advised is material for him to make answer unto, alleges as follows:

(1) Defendant, as such Secretary, denies that the acts and proceedings of the Commission to the Five Civilized Tribes of Indians, and of this defendant as Secretary of the Interior, or either of them, in the administration and execution of the provisions of section 23 of the act of July 1, 1902 (32 Stat. L., 716,718), are fully set forth in the report of the Commission of October 30, 1902, the report of the Commissioner of Indian Affairs of November 22, 1902, the letter of this defendant, as such Secretary, of November 29, 1902, the report of the Commission of March 17, 1903, the report of the Commissioner of Indian Affairs of March 27, 1903, the letter of this defendant, as such Secretary, of March 30, 1903, the report of the Commission of April 20, 1903, and the reports of the Commissioner of Indian Affairs of April 28 and April 30, 1903, as alleged and set forth in said amendment to the complainants' bill of complaint.

(2) Defendant, as such Secretary, denies that there has been any segregation of 157,600 acres of land, or that from said reports and letters, or from either or any of them, it appears that any segregation of land was made and completed by the Commission as required by the provisions of said section 23 of the act of July 1, 1902, or that it appears from said reports and letters, or from either or any of them, that it was held and considered by the Commission or by the Secretary of the Interior, or either of them, as having been made and completed by said Commission and by the Secretary of the Interior, or either of them, or was in fact approved or considered to have been approved by the Secretary of the Interior, as alleged and set forth in the amendment to said bill of complaint.

(3) Defendant, as such Secretary, denies that the Commission to the Five Civilized Tribes proceeded to the allotment of any of the lands in the Cherokee Nation under the direction and with the approval of this defendant, as such Secretary of the Interior, as alleged and set forth in the amendment to said bill of complaint.

(4) This defendant, as such Secretary, further answering the allegations in the amendment to the bill of complaint, alleges that on or about the 1st day of January, 1903, the Commission to the Five Civilized Tribes of Indians opened a land office at Vinita, Ind. T., for the purpose of receiving and passing upon applications from Cherokee citizens not Delawares for lands in the Cherokee Nation; that thereafter, and until the filing of the bill of complaint herein, the Commission received and passed upon applications for allotments made by members of the Cherokee Nation not Delawares, but no applications for allotments thus received and passed upon by said Commission have been approved by this defendant as such Secretary of the Interior; that at the time of the filing of the bill of complaint herein this defendant, as such Secretary, was considering the acts and proceedings of said Commission in so receiving and passing upon allotments, in order to determine whether said acts and proceedings were in conformity with the requirements of the aforesaid act of July 1, 1902.

(5) This defendant, as such Secretary, further alleges that the title to all the lands in the Cherokee Nation is still held by said nation; that until the title to lands embraced in any segregation provided for in section 23 of the act aforesaid has passed from said nation, this defendant, as such Secretary, has, under the law, full power and authority to correct, modify, annul, vacate, or set aside, any segregation of lands in the Cherokee Nation theretofore made by the Commission, notwithstanding said segregation may have received the approval of this defendant as such Secretary; and further, that this defendant, as such Secretary, until the title to the lands embraced in any allotment has passed from the Cherokee Nation, has full power and authority to correct, modify, annul, vacate, or set aside, any allotment received and passed upon by the Commission, notwithstanding the allotment may theretofore have been approved by this defendant as such Secretary of the Interior; and this defendant prays the same benefit of the defense alleged in this paragraph as if he had formerly demurred to the bill upon the ground thereof.

All of which matters and things in this answer contained this defendant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with reasonable costs and charges in this behalf most wrongfully sustained.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Ethan Allen Hitchcock, being duly sworn, deposes and says that he has read the foregoing answer to the amendment to the bill of complaint subscribed by him and knows the contents thereof; that the facts therein stated of his own knowledge are true, and those stated upon information and belief he believes to be true.

Subscribed and sworn to before me this \_\_\_\_\_ day of June, 1903.

\_\_\_\_\_  
Notary Public.

EXHIBIT 49.

In the supreme court of the District of Columbia. Holding an equity court. George Bullette et al. on their own behalf and on behalf of the Delaware tribe of Indians residing in the Indian Territory, complainants, *v.* Ethan Allen Hitchcock, as Secretary of the Interior, et al., defendants. In equity, No. 23991.

*Affidavit of Ethan Allen Hitchcock in support of motion to dissolve temporary restraining order.*

Ethan Allen Hitchcock, being first duly sworn, upon his oath doth depose and say: That he is and since the 20th day of February, 1899, has been Secretary of the Interior; that as such Secretary he is one of the defendants in the above-entitled action; that the defendants, Tams Bixby, Thomas B. Needles, Clifton R. Breckenridge, and William E. Stanley, are members of and constitute what is known as the Commission to the Five Civilized Tribes of Indians, provided for by section 16 of the act of March 3, 1893 (27 Stat. L., 612, 645), and the amendments thereto; that as such Secretary of the Interior this deponent is charged by sections 441 and 463 of the Revised

Statutes of the United States with the supervision and direction of all public business relating to the Indians, the management of Indian affairs, and the management of matters arising out of Indian business, and by section 22 of the act of July 1, 1902 (32 Stat. L., 716, 718), he is especially charged with the direction, supervision, and control of all matters in respect to the appraisement and allotment of lands within the Cherokee Nation.

And deponent further says that by section 23 of the act last mentioned authority is conferred upon said Commission, under the direction of the Secretary of the Interior, to cause to be segregated 157,600 acres of land in the Cherokee Nation, including lands which have been selected and occupied by Delawares in conformity with the provisions of their agreement with the Cherokees dated April 8, 1867; that in making a list of lands to be so segregated it is incumbent upon said Commission to include therein any and all lands which have been selected and occupied by Delawares in conformity to the provisions of their agreement with the Cherokees of April 8, 1867, and to exclude therefrom lands occupied and which have been improved by other Cherokee citizens, or any of them; also to exclude all lands set apart for town sites by the provisions of the acts of June 28, 1898 (30 Stat. L., 495), May 31, 1900 (31 Stat. L., 221), and of July 1, 1902, *supra*; also to reserve all other lands as provided for in section 24 of the last-named act, and to forward a list of the lands so required to be segregated to the Secretary of the Interior for his approval.

And this deponent further says that the segregation so required to be made before it is complete and effective must be approved by the Secretary of the Interior. Further, that on December 16, 1902, said Commission permitted to be filed with it by Walter S. Logan, claiming to be the attorney for the Delaware Indians, an alleged schedule or list of lands aggregating 157,600 acres within the Cherokee Nation, and on December 17, 1902, said Commission, by resolution, instructed its acting chairman to cause to be set aside and segregated the lands designated and described in said schedule or list, and thereafter said acting chairman caused the tracts so described in said schedule or list to be marked upon maps or plats of lands in the Cherokee Nation on file in the office of said Commission as set aside under said section 23. That thereafter and upon further investigation the said Commission discovered numerous errors in said schedule or list and called the attention of said Logan thereto. That on January 23, 1903, the Commission received from Richard C. Adams, claiming to represent the Delaware Indians, an alleged corrected schedule or list of lands selected by them, aggregating 157,600 acres in the Cherokee Nation, and subsequently the schedule or list filed by Logan was corrected to correspond with the schedule or list filed by Adams; that thereafter the Commission made a report to this deponent, as such Secretary of the Interior, of its actions and proceedings with respect to the segregation of 157,600 acres of land in the Cherokee Nation, which report was received by him April 30, 1903, and stated, among other things, in effect that the Commission believed that the lands embraced in said lists or schedules had not been selected with due regard for the interests of either the Delaware citizens generally or other citizens of the Cherokee Nation, and that said lands had been selected without any intention whatever of conforming to the laws relating to the establishment of town sites.

And this deponent, as such Secretary of the Interior, further says that in order to determine whether the acts and proceedings of said Commission with respect to setting apart the 157,600 acres of land aforesaid should be approved and the said lists or schedules of lands should be accepted as a proper designation and description of the lands by section 23 required to be segregated and set apart, he was, in the due and regular course of official business, immediately prior to and at the time of the institution of the suit herein, considering the report of said Commission with respect to its said acts and proceedings, and investigating and examining said acts and proceedings with the view of ascertaining whether said acts and proceedings were in conformity with the statutes in such case made and provided, and whether said lists or schedules included all lands which had been theretofore selected and occupied by the Delawares, and whether said lists or schedules included any lands which by law should not be included therein. And this deponent, as such Secretary of the Interior, further says that before completing the consideration of said report and before completing said investigation and examination, he was, as such Secretary, served with the restraining order of this court issued in this suit, which restraining order in effect commands him to desist from proceeding further with his examination and investigation.

And this deponent, as such Secretary of the Interior, further says that from the investigation heretofore made by him with respect to the actions and proceedings of said Commission in regard to the segregation of the said 157,600 acres of land, it appears that said acts and proceedings were not done and performed in conformity with the statute, and that from his examination of the said lists or schedules he believes that the same do not include all the lands theretofore occupied and selected

by Delawares, and do include lands which, under the law, are reserved for town-site and other purposes, and lands which, prior to the filing of said lists or schedules, were in the possession of and had been improved by other Cherokees, not Delawares; further, that the rights of a large number of Delaware Indians have been ignored by those who made and filed said lists or schedules. And this deponent, as such Secretary of the Interior, further says that his approval or disapproval of the acts and proceedings of said Commission, or his approval or disapproval of said lists or schedules aforesaid, require on his part, as such Secretary of the Interior, an investigation of facts and an examination of laws; further, that the duty of directing and supervising the acts and proceedings of said Commission, the duty of approving or disapproving said acts and proceedings, and the duty of accepting or rejecting the lists or schedules of lands so filed with said Commission, as aforesaid, involves upon his part the exercise of judgment and discretion, and is not, as he is advised, subject to interference or control by the judicial branch of the Government in injunction proceedings.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 1903.

EXHIBIT 50.

In the supreme court of the District of Columbia. Holding an equity court. George Bullette et al., on their own behalf and on behalf of the Delaware tribe of Indians residing in the Indian Territory, complainants, v. Ethan Allen Hitchcock, as Secretary of the Interior, et al., defendants. In equity, No. 23991.

*Affidavit of Tams Bixby in support of motion to dissolve temporary restraining order.*

Tams Bixby, being first duly sworn, upon his oath doth depose and say: That for six years last past he has been a member of what is known as the Commission to the Five Civilized Tribes of Indians provided for by section 16 of the act of March 3, 1893 (27 Stat. L., 612, 645), and the amendments thereto, and that he is now and for three months last past has been the chairman of said Commission; that as such member of said Commission he is one of the defendants in the above-entitled action; that by section 22 of the act of July 1, 1902 (32 Stat. L., 716, 718), exclusive jurisdiction is conferred upon said Commission, under the direction of the Secretary of the Interior, to determine all matters relative to the appraisal and the allotment of lands in the Cherokee Nation; that section 23 of said act imposes upon said Commission the duty to cause to be segregated 157,600 acres of land, including lands which have selected and occupied by the Delawares in conformity to the provisions of their agreement with the Cherokees, dated April 8, 1867, and in making such selection to protect the rights of all the Delaware Indians claiming to be entitled to lands under and in pursuance of the aforesaid agreement, and to exclude from such segregation lands which had theretofore been occupied and improved by other Cherokee citizens, and also to exclude all lands reserved and set apart for town sites by the provisions of the acts of June 28, 1898 (30 Stat. L., 495), May 31, 1900 (31 Stat. L., 221), and section 24 of the act of July 1, 1902, supra.

That on December 16, 1902, there was filed with said Commission by Walter S. Logan, claiming to be the attorney for the Delaware Indians, a schedule of lands, aggregating 157,600 acres, alleged to have been theretofore selected by the Delawares and claimed by them under the aforesaid agreement of April 8, 1867; that on December 17, 1902, by resolution of said Commission, this deponent, as acting chairman thereof, was instructed to cause to be set aside and segregated the lands designated and described in the aforesaid schedule; that in compliance with said resolution this deponent, as acting chairman, caused the tracts described in said schedule to be marked upon maps or plats of land in the Cherokee Nation on file in the office of said Commission as set aside under said section 23; that upon further examination said Commission discovered numerous errors in said schedule or list and called the attention of said Logan thereto; that on January 23, 1903, said Commission received from Richard C. Adams, claiming to represent the Delaware Indians, an alleged corrected schedule of lands selected by them, aggregating 157,600 acres, in the Cherokee Nation; that thereafter the schedule so filed by Walter S. Logan was corrected to correspond with the schedule as filed by said Adams and said corrected schedule accepted by said Commission as a proper designation of the lands to be selected and segregated under the provisions of said section 23; that thereafter a number of Cherokee citizens, not Delawares, complained to said Commission that said corrected schedule embraced a large quantity of lands which had theretofore been in their possession,

and upon which they had made improvements, and which had not been occupied or improved by any Delaware; that since the filing of said corrected schedule a number of Delaware Indians have made complaints to said Commission that said corrected schedule did not include lands which had theretofore been selected and occupied by them, and have made requests to be allowed to make final selections of lands containing improvements and upon which they reside, and claiming that no portion of the lands so requested to be allotted to them were included within said corrected schedule. Further, that since the filing of said corrected schedule the Commission has discovered that it includes lands which were by law reserved for town-site purposes.

And deponent further says that he and the other members of said Commission, from their investigation made since the filing of said corrected schedule, are impressed with the belief that the lands designated thereby were not selected with due regard for the interests of either the Delaware citizens generally or other citizens of the Cherokee Nation, and that said corrected schedule embraces lands which by law are reserved for town-site purposes. And deponent further says that on April 20, 1903, said Commission made a report of its actions and proceedings with respect to the segregation of said 157,600 acres of land to the Secretary of the Interior for his approval or disapproval, and in said report stated, among other things, that said corrected schedule was made without any intention of conforming to the laws relating to the establishment of town sites and without due regard for the interests of the Delaware Indians or other citizens of the Cherokee Nation. And further deponent said not.

TAMM BIXBY.

DISTRICT OF COLUMBIA, ss:

Sworn and subscribed before me this 13th day of June, A. D. 1903.

[SEAL.]

W. BERTRAND ACKER,  
*Notary Public in and for the District of Columbia.*

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EXHIBIT 51.

COMMISSION TO THE FIVE CIVILIZED TRIBES,  
*Tahlequah, Ind. T., August 31, 1903.*

R. C. ADAMS, *Fort Gibson, Ind. T.*

DEAR SIR: On July 10, 1903, James S. Fuller, of Fort Gibson, Ind. T., appeared before the Cherokee land office at Tahlequah, Ind. T., and selected in allotment for his wife, Rosa L. Fuller, the S.  $\frac{1}{2}$  of the SW.  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of sec. 1, T. 15 N., R. 19 E. of the Indian meridian, containing 20 acres.

It appears that you also claim the above-described tract of land, or a part thereof.

Section 69 of the act of Congress approved July 1, 1902 (Public—No. 241), provides as follows:

“SEC. 69. After the expiration of nine months after the date of the original selection of an allotment by or for any citizen of the Cherokee tribe as provided in this act, no contest shall be instituted against such selection, and as early thereafter as practicable patent shall issue therefor.”

You are therefore hereby notified that you may appear at the Cherokee land office at any time within nine months after the date of said selection and make application for the above-described tract of land, or any part thereof claimed by you, and file contest therefor if you so desire.

Respectfully,

TAMM BIXBY,  
*Commissioner in Charge Cherokee Land Office.*

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EXHIBIT 52.

In the supreme court of the District of Columbia, George Bullette et al. v. Ethan Allen Hitchcock, Secretary of the Interior, et al., No. 233991.

*Opinion of Mr. Justice Anderson on motion for temporary injunction.*

STATEMENT OF THE CASE.

On the 2d day of June, 1903, the complainants, George Bullette and others, on their own behalf and on behalf of the Delaware Indians residing in the Indian Territory, filed their bill of complaint against the defendants, Ethan Allen Hitchcock,

Secretary of the Interior, and Tams Bixby, Thomas B. Needles, Clifton R. Breckenridge, and William E. Stanley, members of and constituting the Commission to the Five Civilized Tribes of Indians, generally known and called the "Dawes Commission," praying among other things for an injunction to restrain the defendants from receiving or entertaining applications for allotment of any portion of the 157,600 acres of land purchased by the Delawares from the Cherokee Nation under a certain agreement or treaty made between them on or about April 8, 1867, and which lands the bill alleges were thereafter, to wit, in January, 1903, duly segregated and set apart for them by said Commission, pursuant to an act of Congress approved July 1, 1902, and also from entertaining or considering any contests based upon such applications, and that a mandatory writ of injunction issue out of this court, commanding the defendants to strike from the files of their office all such applications which have been or which may be filed touching said aggregated lands, until the rights of said Delaware Indians in and to the lands and funds of said Cherokee Nation under said agreement of April 8, 1867, have been finally passed upon and determined by the Supreme Court of the United States in a suit brought in the Court of Claims of the United States by the Delaware Indians against the Cherokee Nation under the authority of section 25 of an act of Congress approved June 28, 1898, and now pending in the Supreme Court of the United States on appeal from a decree rendered by the Court of Claims February 2, 1903, dismissing said suit.

It is alleged in the bill of complaint that under said agreement of April 8, 1867, the Cherokee Nation sold to the Delawares (then residing in the State of Kansas) an amount of land east of the ninety-sixth degree, in the aggregate equal to 160 acres for each individual Delaware who had been enrolled on a certain register made February 18, 1867, and such as might be added thereto within a specified time, and for which lands the Delawares agreed to pay the Cherokees \$1 per acre; that pursuant to that agreement it was ascertained that the number of Indians so enrolled and entitled to be enrolled was 985, and the number of acres to which they were thus entitled was 157,600; that thereafter and during the year 1867 the Delawares, in pursuance of the terms of said agreement, paid into the treasury of the Cherokee Nation the sum of \$157,600, the agreed purchase price for said land; that although the 157,600 acres were not then segregated or set apart, yet the individual Delaware Indians enumerated in the said enrollment at once, after the payment of the \$157,600, removed to and occupied and improved about 157,600 acres of land in the Cherokee Nation pursuant to the terms of said agreement, and also certain other lands under claim of right.

Touching the segregation of the 157,600 acres from the other lands of the Cherokee Nation, the complainants further allege that by section 25 of an act of Congress approved June 28, 1898, entitled "An act for the protection of the people of the Indian Territory, and for other purposes" (30 Stat. L., 495) it is provided:

"That before any allotment shall be made of lands in the Cherokee Nation there shall be segregated therefrom by the Commission heretofore mentioned, in separate allotments or otherwise, the one hundred and fifty-seven thousand six hundred acres purchased by the Delaware tribe of Indians from the Cherokee Nation under agreement of April eighth, eighteen hundred and sixty-seven, subject to the judicial determination of the rights of said descendants and the Cherokee Nation under said agreement. That the Delaware Indians residing in the Cherokee Nation are hereby authorized and empowered to bring suit in the Court of Claims of the United States, within sixty days after the passage of this act, against the Cherokee Nation for the purpose of determining the rights of said Delaware Indians in and to the lands and funds of said nation under their contract and agreement with the Cherokee Nation, dated April eighth, eighteen hundred and sixty-seven; or the Cherokee Nation may bring a like suit against said Delaware Indians; and jurisdiction is conferred on said court to adjudicate and fully determine the same, with right of appeal to either party to the Supreme Court of the United States."

The complainants further allege that pursuant to the authority contained in this section (25), the Delaware Indians residing in the Cherokee Nation within the time limited in this section (viz, within sixty days from its passage), brought suit in the Court of Claims of the United States against the Cherokee Nation for the purpose therein provided, and such proceedings were therein had that on about February 2, 1903, a decree was rendered by said court dismissing said suit, and thereupon, on or about March 19, 1903, the Delawares by their counsel duly appealed from said decree to the Supreme Court of the United States, and which appeal is now on the calendar of that court, but has not yet been argued or determined.

It is further alleged that thereafter, to wit, July 1, 1902, Congress passed an act entitled "An act to provide for the allotment of the lands of the Cherokee Nation for the disposition of town sites therein, and for other purposes," approved July 1, 1902 (public, No. 241), which was duly ratified by the Cherokee Nation (as provided in said section 75) at a general election held on or about August 7, 1902, and that by

reason of such ratification the Cherokee Nation and the individual members thereof thereby ratified and consented to the provisions of said section 23 of said act, which provides for the segregation and withdrawal from allotment of the 157,600 acres claimed by the Delawares. Said section 23 reads as follows:

"All Delaware Indians who are members of the Cherokee Nation shall take lands and share in the funds of the tribe, as their rights may be determined by the judgment of the Court of Claims or by the Supreme Court, if appealed, in the suit instituted therein by the Delawares against the Cherokee Nation, and now pending; but if said suit be not determined before said Commission is ready to begin the allotment of lands of the tribe, as herein provided, the Commission shall cause to be segregated one hundred and fifty-seven thousand six hundred acres of land, including lands which have been selected and occupied by Delawares, in conformity to the provisions of their agreement with the Cherokees, dated April eighth, eighteen hundred and sixty-seven, such lands so to remain, subject to disposition according to such judgment as may be rendered in said cause; and said Commission shall, when final judgment is rendered, allot lands to such Delawares in conformity to the terms of the judgment and their individual rights thereunder. Nothing in this act shall in any manner impair the rights of either party to said contract, as the same may be finally determined by the court, or shall interfere with the holdings of the Delawares under their contract with the Cherokees of April eighth, eighteen hundred and sixty-seven, until their rights under said contract are determined by the courts in their suit now pending against the Cherokees, and said suit shall be advanced on the docket of said courts and determined at the earliest time practicable."

It is then alleged in the bill that by said act of Congress last mentioned (viz, act of July 1, 1902), it was provided with respect to the lands of the Cherokee Nation—excluding said 157,600 acres of land—that Cherokee citizens might file with the defendants applications for allotment thereof, and that the Dawes Commission should have exclusive jurisdiction to determine all matters relative to such allotments and of any contest in relation thereto, and that after the expiration of nine months from the date of original allotment by or for any Cherokee citizen, no contest should be instituted against such selection, and that as early thereafter as practicable a patent should issue therefor.

The complainants therefore allege and so contend that according to the provisions of section 23 of said act of Congress of July 1, 1902, and according to the true intent and meaning thereof, said Commission was required, until the final determination of said suit by the Supreme Court of the United States, to cause said 157,600 acres of land to be segregated and to be kept segregated and apart from all other lands of the Cherokee Nation, and to remain so segregated until final judgment shall be rendered by the Supreme Court; and that if any allotment of land of the Cherokee Nation should be made to such Cherokee citizens prior to said determination of the Supreme Court, it should be made from lands other than those to be so segregated, and that the Commission was thereby ordered and directed not to allow any applications for allotment for such segregated lands to be filed, and not to allow any contests to be instituted with respect to any such lands until at least after such final determination of said suit should be made; and that only upon the rendering of such final judgment should such segregated lands be allowed in severalty, either to said Delawares, in case of their success in said suit, or to them or other members of the said Cherokee Nation in case said suit should be unsuccessful.

The complainants further allege that in December, 1902, the Delaware tribe, pursuant to said section 23, filed with the Commission a list of selections of land made by them, respectively, aggregating 157,600 acres, and in January, 1903, an amended and corrected list, which was then received, accepted, and placed on file by said Commission as and for a designation and description of the Delaware lands segregated under the authority of said acts of 1898 and 1902; and that in January, 1903, the Commission caused said 157,600 acres of land to be segregated and set apart in obedience to the mandates contained in said acts of Congress.

It is also alleged that after the segregation of these lands the Dawes Commission opened a land office at Vinita, Ind. T., and since January 1, 1903, have allowed numerous persons who are, or who claim to be, citizens of the Cherokee Nation, to file with said Commission applications for various of the lands so segregated, and have notified numerous Delawares who have improved and are occupying said segregated lands that such applications have been filed, and that unless they appear before the Commission and contest the same within nine months from the date of the filing of such applications they will be forever barred from any interest therein, as provided in section 69 of the act of July 1, 1902, notwithstanding said applications for allotment have reference to and cover lands within a part of said 157,600 acres segregated and set apart for the Delawares.



And it is further alleged that said Commission threatens and intends in the future to continue to receive and act upon such illegal applications, and claims the right so to do, despite the provisions of said section 23, the pendency of said suit, and the protests of complainants. And, furthermore, that defendants threaten to hold and determine that the provisions of said act of Congress approved July 1, 1902, touching applications for and contests over the allotment of lands in the Cherokee Nation generally, and the statute of limitations set forth in section 69 of said act, apply to all lands, in the Cherokee Nation, including said segregated lands, notwithstanding the provisions of section 23 of said act and notwithstanding the pendency of said suit in the Supreme Court of the United States, and that unless the defendants be enjoined from receiving such applications and from holding that the limitation of nine months applies thereto, irreparable injury will be done the complainants and their associates and that a multiplicity of suits will be inevitable.

A mandatory injunction is therefore asked to direct the defendants to strike from the files all applications for lands within the segregation and to eject therefrom all persons who have gone upon said lands in pursuance of such applications.

An injunction is also asked to prevent defendants from receiving further similar applications and from holding the nine months' limitation (named in section 69) applicable thereto. Process was issued upon this bill of complaint and service thereof was had upon the Secretary of the Interior and upon Tams Bixby, chairman of the Dawes Commission, who at the time of filing the bill chanced to be in the District of Columbia. The other defendants, members of the Dawes Commission, have not been served.

ANSWER.

To this bill of complaint the Secretary of the Interior filed his answer under oath, in which he denies that the segregation of said 157,600 acres of land, provided for by section 25 of the act of 1898 and section 23 of the act of 1902, has been made.

Answering the thirteenth paragraph of the bill, he alleges that on December 16, 1902, there was filed with said Commission a schedule of lands aggregating 157,600 acres, alleged to have been theretofore selected by the Delawares, and claimed by them under their agreement with the Cherokee Nation of April 8, 1867; that on the next day, December 17, 1902, said Commission, by resolution, instructed Tams Bixby, its acting chairman, to cause to be set aside and segregated the lands designated and described in said schedule. That thereafter, and in compliance with that resolution, Bixby, as such chairman, caused the tracts described in this schedule to be marked on maps in the office of the Commission as segregated under said acts; that thereafter, and upon further examination, the Commission discovered numerous errors in said schedule and called the attention thereto of the person who had filed it; that, on January 23, 1903, the Commission received a corrected list and thereupon the schedule filed December 16, 1902, was corrected to correspond with the schedule filed January 23, 1903, and that this corrected schedule was received and accepted by the Commission as a proper designation of the lands to be selected and segregated under said section 23; that thereafter a number of Cherokee citizens, not Delawares, complained to the Commission that this schedule, as amended, embraced lands belonging to them and then in their possession and upon which they had made improvements; that complaint was also made by certain Delawares that their lands theretofore selected and occupied by them had been omitted from this schedule and requesting the Commission to be allowed to make final selections of lands containing improvements and upon which they resided and which were not included in said corrected schedule; that it was also discovered by the Commission that said corrected schedule embraced lands which were by law reserved for town sites, under section 24 of said act of 1902, and therefore not subject to segregation under the provisions of said section 23; and further, that the lands designated and described in said corrected lists were not selected with due regard either for the benefit of the Delaware citizens generally or other citizens of the Cherokee Nation. That on April 20, 1903, the Commission made a report of its acts and proceedings, with respect to the filing and acceptance of said schedule, to the Secretary of the Interior for his approval, which report was received by the Secretary of the Interior April 30, 1903, and has not been fully considered by him; and that such acts and proceedings of the Commission, as set forth, have not received his approval, and that he has not accepted or approved said corrected schedule as a proper designation and description of the land to be segregated under section 23.

He also denies that said Commission now claims to have the right to receive applications for the allotment of lands designated and described in said schedule, or now claims to have the right, upon the filing of any such applications, to consider that the individual Delawares are barred or foreclosed of any interest in the 157,600 acres of land to be segregated under said section 23 of the act of July 1, 1902.

He also denies that said Commission threatens and intends in the future to continue to receive, accept, and file further applications and to call upon individual Delawares to defend against the same, or threatens and intends to hold and determine that unless said Delawares institute a contest within said nine months their rights to said segregated lands shall lapse, or that the Commission threatens and intends to hold and determine that the provisions of the act of Congress approved July 1, 1902, touching applications for and contests over the allotment of lands in the Cherokee Nation generally or that the statute of limitations set forth in section 69 of said act apply to all lands of the Cherokee Nation, including said segregated lands, notwithstanding the provisions of section 23 of said act, and notwithstanding the pendency of said suit in the Supreme Court of the United States.

He also denies that either he or said Commission have disregarded any protests by said Delawares, but alleges that all such protests were being considered by him, as such Secretary, in connection with the acts and proceedings of said Commission under said section 23 of the act of July 1, 1902, at the time of the filing of the bill of complaint herein, and that proper action thereon and on such acts and proceedings of said Commission has not yet been taken because of the issuance of the temporary restraining order herein. And he denies that either he or said Commission has done any acts or threatened or intend to do any acts to the prejudice of the rights of the complainants or their associates to said segregated lands, but, on the contrary, that when said segregation is finally made and approved no allotments will be made of any lands included therein until the suit between the Delawares and Cherokees is finally determined by the Supreme Court.

He not only admits but specifically affirms the allegations of the bill of complaint that, by the several acts of Congress creating and defining the powers of said Commission and all the acts and proceedings of such Commission under said laws, are subject to the directions of the Secretary of the Interior. But he denies that the acts and proceedings of said Commission, with respect to said schedules of land received and filed by said Commission, were done by and with his direction and approval, as Secretary of the Interior or otherwise.

And finally he alleges that he, as such Secretary of the Interior, and said Commission to the Five Civilized Tribes of Indians, constitute a special tribunal charged with the duty of segregating and allotting the lands in the Cherokee Nation; that said duty requires upon the part of said tribunal the exercise of judgment and discretion; that before the segregation of said 157,600 acres provided for in section 23 of the act of 1898 is complete or effective, it must be approved by him as such Secretary of the Interior; that this duty involves on his part, as such Secretary, the exercise of judgment and discretion and is not, therefore, as he is advised, subject to review, control of interference by the judicial branch of the Government in injunction proceedings, and he prays the same benefit as if he had demurred on that ground.

The affidavits of the defendants, the Secretary of the Interior and Tams Bixby, are filed with the answer and are substantially to the same effect.

#### AMENDMENT TO BILL.

Thereupon the complainants amended the thirteenth paragraph of their bill and alleged that the acts and proceedings of the Dawes Commission, the Commissioner of Indian Affairs, and the Secretary of the Interior, in the administration and execution of the provisions of said section 23, are fully set forth in certain of their reports and letters, copies of which are filed with said bill and made part thereof; and that it appears from said reports and letters, and that the fact is, that the segregation of the 157,600 acres, as required by said section 23, was completed by said Commission in December, 1902, and was held and considered by the Commission and by the Secretary of the Interior, as having been made and completed by said Commission and by the Secretary of the Interior, and was, in fact, then approved and considered to have been approved by said Secretary. That thereupon, and because it was held by the Secretary of the Interior to have been made in compliance with the law, the Commission thereupon proceeded, under the direction and with the approval of the Secretary of the Interior, to the allotment of the remaining lands in the Cherokee Nation under the authority of said section 23 of the act of July 1, 1902; that on January 1, 1903, the Commission opened a land office at Vinita, Ind. T., for the purpose of receiving applications from Cherokees for lands, other than those so segregated, and making allotments thereof; that thereupon and during the months of January and February, 1903, more than 1,600 applications were filed, and more than 1,300 allotments were made and reported by said Commission and the report thereof approved by the Secretary of the Interior; that said land office continued open until the filing of this suit in June, 1903, during which time it is alleged that more than 8,000 applications,

covering more than 800,000 acres of land, were made, and more than 5,000 allotments, covering 500,000 acres of land, were reported to and approved by the Secretary of the Interior, and that said allotments could not have been legally made and approved if the segregation of the 157,600 acres had not already been made under said section 23 as preliminary and as a prerequisite to the making of said allotments.

## ANSWER TO AMENDMENT OF PARAGRAPH 13 OF BILL.

The Secretary of the Interior filed a sworn answer to this amendment and denied that the acts and proceedings of the Secretary and of the Dawes Commission, or of either of them, in the administration and execution of the provisions of section 23, are fully set forth in said reports and letters filed with said amendment, and also denies that it appears from said reports and letters that there has been any segregation of the 157,600 acres of land, as required by said section 23 of the act of July 1, 1902; or that it was held and considered by the Commission or the Secretary, or either of them, as having been so made or completed, or that it was in fact approved by him as therein alleged.

He also denies that the Dawes Commission proceeded to the allotment of any lands in the Cherokee Nation under his direction and approval, as set forth in the amendment to said bill. He further alleges that about January 1, 1903, the Dawes Commission opened a land office at Vinita, Ind. T., for the purpose of receiving and passing upon applications from Cherokee citizens, not Delawares for lands in the Cherokee Nation, and that until the filing of the bill of complaint, said Commission received and passed upon such applications for allotments. But no such applications for allotments have been approved by the defendant as Secretary of the Interior; and that the time of the filing of the bill of complaint herein the defendant, as such Secretary, was considering the acts and proceedings of said Commission in so receiving and passing upon allotments, in order to determine whether they were in conformity with the requirements of said act of July 1, 1902.

And finally the Secretary alleges that the title to all lands in the Cherokee Nation is still held by said nation; and that until the title to lands embraced in any segregation provided for in section 23 of the act of 1902 has passed from said nation, he, as Secretary of the Interior, has the power and authority, under the law, to correct, modify, amend, vacate, or set aside any segregation of lands in the Cherokee Nation, if any has been made, even though the same may have received his approval.

## OPINION.

It will be observed that this bill of complaint and the relief prayed for is founded upon the theory:

1. That, as a question of fact, the 157,600 acres of land to which the Delaware Indians are entitled under their contract of purchase made with the Cherokees April 8, 1867, have been finally segregated and set apart for their use and for final allotment, at the appropriate time, as provided for in the acts of 1898 and 1902.

2. That, as a question of law, said lands having been so segregated, neither said Commission nor the Secretary of the Interior has or can exercise any further jurisdiction over the same other than to keep them free from incumbrances, or other charges, and prevent the impairment of the rights of the Delawares therein and thereto until the Supreme Court of the United States has rendered its final judgment in the suit of the Delawares against the Cherokee Nation now pending in that court.

The right determination of these questions involves the interpretation of the acts of Congress mentioned, and an examination of the state of the case as to what has actually been done thereunder.

Section 25 of the act of Congress approved June 28, 1898 (30 Stat. L., 495), known as the Curtis Act, imposed upon the Commission to the Five Civilized Tribes, or on what is generally known as the "Dawes Commission" (which was created by the act of March 1, 1893), (27 Stat. L., 612,645) the duty of segregating from the other lands of the Cherokee Nation the 157,600 acres purchased by the Delaware tribe of Indians from the Cherokee Nation under their agreement of April 8, 1867. Such segregation, as provided by said section, was to be made by the Commission "subject to the judicial determination of the rights of said descendants and the Cherokee Nation under said agreement."

By the same section jurisdiction is conferred upon the Court of Claims of the United States, with the right of appeal to the Supreme Court of the United States, to adjudicate and finally determine the rights of the Delaware Indians in and to the lands and funds of the Cherokee Nation under their contract of April 8, 1867. Thereupon, and pursuant to that section, the Delawares, in August, 1898, instituted such

suit against the Cherokee Nation in the Court of Claims, which was thereafter, on or about February 2, 1903, dismissed by a decree of that court. On or about March 19, 1903, the Delawares appealed from said decree to the Supreme Court of the United States, where said appeal is now pending. During the pendency of said suit in the Court of Claims, viz, July 1, 1902, Congress passed another act entitled "An act to provide for the allotment of the lands of the Cherokee Nation, for the disposition of town sites therein, and for other purposes." (32 Stat. L., 716.)

This act was duly ratified by the Cherokee Nation at a general election held on or about August 7, 1902, as provided in section 75 thereof.

Section 23 of that act makes further provision for said segregation as follows:

1. "All Delaware Indians who are members of the Cherokee Nation shall take lands and share in the funds of the tribe as their rights may be determined by the judgment of the Court of Claims, or by the Supreme Court, if appealed, in the suit instituted therein by the Delawares against the Cherokee Nation and now pending.

2. "But if said suit be not determined before said Commission is ready to begin the allotment of lands of the tribe as herein provided, the Commission shall—

(a) "Cause to be segregated 157,600 acres of land, including lands which have been selected and occupied by Delawares, in conformity to the provisions of their agreement with the Cherokees dated April 8, 1867, such lands (the 157,600 acres) so to remain subject to disposition according to such judgment as may be rendered in said cause.

(b) "And said Commission shall thereupon (after segregating said 157,600 acres) proceed to the allotment of the remaining lands of the tribe aforesaid, and lastly

(c) "Said Commission shall, when final judgment is rendered, allot lands to such Delawares in conformity to the terms of the judgment and their individual rights thereunder."

And then in order to safeguard the rights of both parties pending said suit the same section provides that—

(d) "Nothing in this act shall in any manner impair the rights of either party to said contract as the same may be finally determined by the court, or shall interfere with the holdings of the Delawares under their contract with the Cherokees of April 8, 1867, until their rights under said contract are determined by the courts in their suit now pending against the Cherokees."

It is apparent from the plain reading of these two sections (viz, section 25 of the act of June 28, 1898, and section 23 of the act of July 1, 1902) that Congress intended to and did confer on the Delaware Indians the right to have the 157,600 acres of land purchased by them from the Cherokees duly segregated and set apart from the other lands of the Cherokees as soon as the same has been duly selected and designated, and when so selected and segregated to have the same so kept and maintained until final judgment is rendered in the suit now pending in the Supreme Court of the United States, and that "when (such) final judgment is rendered, said Commission shall thereupon allot lands to the Delawares in conformity to the terms of the judgment and their individual rights thereunder" (section 23).

By section 22 of said act Congress also conferred upon said Commission, under the direction of the Secretary of the Interior, exclusive jurisdiction to determine all matters relative to the allotment of lands in the Cherokee Nation.

Section 24 provides that certain lands, including town lots, shall be reserved from allotment.

It seems clear, in the light of these statutes, that the segregation of the 157,600 acres is to be made not by the Commission alone, but by the Commission, subject to the direction of the Secretary of the Interior. Indeed, this is expressly admitted in paragraph 26½ of the bill, which alleges, and which is admitted by the answer, " \* \* \* that by the several acts of Congress creating and defining the powers of said Commission to the Five Civilized Tribes all the acts and proceedings of said Commission are subject to the direction of the Secretary of the Interior."

It would seem to follow, therefore, that while the segregation must be made by the Dawes Commission, it must be made under the direction of the Secretary of the Interior and have his official approval before it is complete and effective.

The first question, then, as already suggested, is whether the segregation of the 157,600 acres has been made and is now final and effective.

The Secretary of the Interior, in his sworn answer and in his affidavit as well, denies in the most direct and positive terms that this segregation has been made or that he has approved it. The answer of the Secretary might well be accepted as conclusive on this point were it not for the amendment to paragraph 13 of the bill of complaint, which sets up certain reports of the Commission and of the Commissioner of Indian Affairs and certain correspondence of the defendants, which the complainants claim shows such proceedings had and such acts done by the Dawes

Commission and the Secretary of the Interior as to leave no question that, as a matter of fact as well as matter of law, such segregation has been made by the Commission and duly approved by the Secretary, and is therefore complete and final.

Two theories are presented as to the segregation of these lands. The contention of the complainants is that when the Delawares filed with the Commission in December, 1902, the schedule of lands selected by them, and the same was thereafter revised and corrected January 23, 1903, and so received and filed by said Commission, that such corrected schedule was thereby finally accepted by the Commission as a proper designation of the lands actually selected and segregated under said act of Congress, and that in the light of the reports and correspondence heretofore mentioned such acts and procedure constitute in fact and in law a full, complete, and final segregation of the 157,600 acres as provided in the acts of 1898 and 1902. On the other hand, the contention of the Secretary of the Interior is that "said corrected schedule was received and accepted by said Commission not as a proper designation of the lands actually selected and segregated, but of the lands to be selected and segregated under his direction and approval, and therefore no actual segregation has been made by said Commission or approved by the Secretary." If the latter view is correct, that would seem to end the controversy, and the consequent denial of the writ of injunction and the discharge of the temporary restraining order would necessarily follow; otherwise the complainants are entitled to the relief prayed for, because, if the segregation has been finally made and completed, neither the Commission nor the Secretary has any further jurisdiction in the matter, other than to maintain the status quo; until the Supreme Court of the United States has decided the case now before it.

In support of the contention of the complainants that the 157,600 acres were segregated in January, 1903, and the jurisdiction of the Commission and of the Secretary in that behalf, thereby ousted, they argue that inasmuch as section 23 (act of July 1, 1902) plainly requires that before the Commission shall proceed to the allotment of the Cherokee lands (that is, lands other than the 157,600 acres to be set apart to the Delawares), the Commission shall first segregate and set apart the lands selected and occupied by the Delawares, and inasmuch as the Commission, after the filing of said corrected schedule in January, 1903, did proceed to the allotment of the other lands of the Cherokees, they could only have done so on the supposition and belief on the part of the Commission and the Secretary (who they allege had knowledge of the same) that the segregation had before that time been made and completed; otherwise, they insist, their acts would have been in flagrant disobedience of the law. That the Dawes Commission did so believe and did proceed in the matter of the allotment of the Cherokee lands, other than the 157,600 acres, in the manner pointed out, admits of no serious question. Indeed the reports and correspondence filed with the amendment to the bill leaves room for no other interpretation, besides the answer of the Secretary, in effect, admits it, although he expressly denies that "said Commission proceeded to the allotment of said lands under his direction and approval."

It is equally clear, however, that no matter what view the members of the Dawes Commission may have entertained as to their jurisdiction touching the segregation of the 157,600 acres and the subsequent allotment of Cherokee lands, they could neither enlarge their own, nor limit the jurisdiction of the Secretary of the Interior in relation thereto, through any mistaken interpretation of the law or assumption of authority on their part; so that, if they assumed that under the law they had the power to make and conclude the segregation of these lands independent of the Secretary of the Interior, and that in accepting and filing said schedule of selected lands in December, 1902, and in the revision and correction of same in January, 1903, they thereby made and completed said segregation and the same thereby became immediately effective, and in that belief they then proceeded to the allotment of the other lands of the Cherokees, such belief and course of procedure on their part would not constitute a segregation within the meaning of the law, unless they either have exclusive jurisdiction in the matter, or their acts in that behalf have had the sanction and approval of the Secretary of the Interior.

As already pointed out, in my view of these statutes, and as admitted by paragraph 26½ of the bill of complaint, this segregation must be made by the Commission subject to the direction of the Secretary of the Interior, and hence the Commission does not have and can not exercise exclusive jurisdiction in the matter. Moreover, section 23 of the act of 1902 provides that such segregation must be first so made before the Commission can properly proceed to the allotment of the remaining Cherokee lands, i. e., lands other than the segregated lands, and therefore, unless such alleged segregation was in fact made, subject to the direction of the Secretary, it necessarily follows that it did not become complete and effective upon the mere receipt and filing of said schedule of selected lands in December, 1902, or of the amended and corrected

schedule in January, 1903, or at any other time; and that all subsequent steps on the part of the Commission looking to the allotment of the other Cherokee lands referred to were untimely and irregular, and can in no wise affect the rights of the Delawares in the final segregation and allotment, unless, as stated, the same was in fact done under the direction and with the approval of the Secretary and is now beyond his recall.

The Secretary, both in his answer and in his affidavit, as already pointed out, alleges directly and emphatically that this segregation has not been so made and approved by him.

While it is true that it appears from the Secretary's answer that the Dawes Commission opened a land office and received applications for allotments of land outside of the land described in the schedule filed with the Dawes Commission, he alleges that none of these acts were done under his direction nor have they received his approval, but that at the very time of the filing of this bill he was considering the question of their legality. As to whether the attempted segregation has been approved by the Secretary depends, therefore, upon the effect to be given the reports and documents referred to in the amendment to the bill, and upon which counsel for complainants predicated their argument that, as a matter of law, the Secretary has approved such segregation.

After a careful reading and rereading of these reports and documents, I am clearly of opinion that they do not support this contention. If it has been so approved, and the Commission, under the direction and with the approval of the Secretary of the Interior, had proceeded to make, or was about to make, allotments that affected any of the lands so segregated, as charged in the bill, then it would clearly be the duty of the court, under the circumstances of this case, to restrain such action by injunction; because, under section 23 of the act of July 1, 1902, it is made the plain duty of the Commission, in the event that the suit now pending in the Supreme Court be not determined before the Commission is ready to begin the allotment of lands of the tribe, to cause said 157,600 acres to be segregated, and to be kept segregated and apart from all other lands of the Cherokee Nation, and there stop—so far as said segregation is concerned—until final judgment has been rendered by the Supreme Court of the United States.

The language of said section being:

"If said suit be not determined before said Commission is ready to begin the allotment of lands of the tribe as herein provided, the Commission shall cause to be segregated 157,600 acres of land, including lands which have been segregated and occupied by Delawares in conformity with their agreement with the Cherokees dated April, 1867, such lands so to remain subject to disposition according to such judgment as may be rendered in said cause; and said Commission shall thereupon (but not before) proceed to the allotment of the remaining lands of the tribe as aforesaid."

It is likewise the plain duty of the Commission, in proceeding to "allot the remaining lands of the tribe," to make the same from lands other than the 157,600 acres segregated (or to be segregated) for the use of the Delawares. And yet, despite these plain provisions of the law and the apparent assumption on the part of the members of the Commission that they have the exclusive right to make this segregation, and had so made it, they unwittingly, or at least erroneously, proceeded to destroy their own handiwork by including in "the allotment of the remaining lands of the tribe" certain of the lands included in their so-called segregation, and at the same time omitted from the segregation itself certain other lands which had been selected and occupied by the Delawares in conformity with their agreement of April, 1867, with the Cherokees, which other lands section 23 expressly provides shall be included in the segregation of the 157,600 acres.

As the hands of the Delawares are tied, so far as the allotment or disposition of the 157,600 acres are concerned, the moment said segregation is once completed it would be a grievous wrong to thus professedly set apart for them all they are entitled to under their contract of 1867 and then proceed to take from them a portion of the very lands thus segregated, in making allotments to the Cherokees out of what is treated as "the remaining lands of the tribe." While it was evidently not the intention of Congress to delay the allotment work in the Cherokee Nation until the suit between the Delawares and Cherokees shall have been finally determined, it was never the intention that, in making such allotment, the rights of the Delawares should be thereby defeated or in anywise prejudiced. This is made clear by section 23 of the act of 1902, which declares that "Nothing in this act shall in any manner impair the rights of either party to said contract as the same may be finally determined by the court, or shall interfere with the holdings of the Delawares under their contract with the Cherokees of April 8, 1867, until their rights under said contract are determined by the courts in their suit now pending against the Cherokees."

It follows, therefore, that any attempted allotment of lands in violation of this section that might be effective and thereby defeat or prejudice the rights of the Delawares thereunder should be promptly restrained.

In his answer the Secretary of the Interior, however, denies, under oath, that either the attempted segregation of said lands or the receiving of said applications for allotments in the Cherokee Nation, was under his direction or has ever received his approval. He also denies that said Commission now claims to have the right to receive applications for the allotment of lands designated and described in said schedule, or the right, upon the filing of any such applications, to consider that the individual Delawares are barred or foreclosed of any interest in the 157,600 acres of land to be segregated under section 23 of the act of 1902; and he further denies that the Commission threatens and intends in the future to continue to receive, accept, and file further applications and to call upon individual Delawares to defend against the same, or to do any of the many things with which they are charged in the bill as intending to do. In view of this broad and emphatic disclaimer of either authority under the law or of any purpose or intention on the part of the defendants to do the acts or to exercise the authority complained of in the bill, it would seem to be clear, under the plain provisions of these statutes, that no matter what view the Commission originally entertained as to their authority in the premises that their acts and proceedings touching said segregation and allotment have not become effective, and can not become so until they have the final sanction and approval of the Secretary of the Interior, and, therefore, in this view of the case, which to my mind is the real and logical situation, no real injury to the rights of the Delawares has been done or is threatened by the defendants, and no substantial ground exists for the interposition of a court of equity. It is perhaps due the members of the Dawes Commission to say, in passing, that while they seem to have proceeded upon the theory that they have exclusive jurisdiction in this matter, they later on discovered and recognized that they and the Secretary of the Interior constitute a special tribunal charged with the duty of segregating and allotting these lands, and that all their acts and proceedings were subject to his direction and approval. Therefore it was, that on April 20, 1903, after objection to said segregation by certain Delawares, and by certain Cherokee citizens not Delawares, and after the Commission discovered that said corrected schedule embraced lands which were by law reserved for town sites under section 24 of the act of 1902, and therefore not subject to segregation, and was otherwise objectionable, they made a report of their acts and proceedings in respect to the filing and acceptance of said schedules to the Secretary of the Interior, for his consideration and approval, which was received by him April 30, 1903, and, which he alleges in his answer, he had under consideration at the time of the issuance of the temporary restraining order herein, with a view of determining whether said acts and proceedings were in conformity with section 23 of the act of July 1, 1902. (32 Stat. L., 717.)

Admitting, however, that the Secretary of the Interior has approved this segregation, as claimed by the complaints, his power and authority to correct, modify, or vacate the same in whole or in part is, in the opinion of the court, clear and undisputable under the law applicable to this case.

Section 441 of the Revised Statutes provides that—"The Secretary of the Interior is charged with the supervision of public business relating to \* \* \* the Indians."

Sections 22, 58, and 59 of the act of July 1, 1902, provides as follows:

"SEC. 22. Exclusive jurisdiction is hereby conferred upon the Commission to the Five Civilized Tribes, under the direction of the Secretary of the Interior, to determine all matters relative to the appraisement and the allotment of lands.

"SEC. 58. The Secretary of the Interior shall furnish the principal chief with blank patents necessary for all conveyances herein provided for, and when any citizen receives his allotment of land, or when any allotment has been so ascertained and fixed, that title should, under the provisions of this act, be conveyed, the principal chief shall thereupon proceed to execute and deliver to him a patent conveying all the right, title, and interest of the Cherokee Nation, and of all other citizens, in and to the lands embraced in his allotment certificate.

"SEC. 59. All conveyances shall be approved by the Secretary of the Interior, which shall serve as a relinquishment to the grantee of all the right, title, and interest of the United States in and to the lands embraced in his patent."

Section 441 also provides that the Secretary of the Interior is charged with the supervision of the public business relating to "the public lands, including mines."

The general powers and authority of the Secretary of the Interior, as expressed in the statute (which are manifestly the same in principle with the provisions of the statute in respect to the duty and powers of the Secretary of the Interior in the disposition of the lands of the Cherokee Nation), have received a broad and comprehensive interpretation by the Supreme Court of the United States. In the case of

*Knight v. United States Land Association* (142 U. S., 161, 178), it was held that—“Respecting the public domain, the Secretary of the Interior is the supervising agent of the Government to do justice to all claimants and preserve the rights of the people of the United States.”

See also: *New Orleans v. Pain* (147 U. S., 261, 266-267); *Williams v. United States* (138 U. S., 514, 523-524); *Hawley v. Diller* (178 U. S., 476, 488, 490); *Michigan Land and Lumber Co. v. Rust* (168 U. S., 589, 592, 594-595); *Beley v. Naphtaly* (169 U. S., 353, 364); *Brown v. Hitchcock* (173 U. S., 473, 476-478); *United States ex rel v. Hitchcock* (190 U. S.), decided May 18, 1903.

In *Knight* against the Land Association, just cited, the Commissioner of the General Land Office approved the survey of certain lands involved in that action; although no appeal was taken from such approval to the Secretary of the Interior, he subsequently set the survey aside. It was insisted that his action was illegal. In passing upon this question the court, speaking through Mr. Justice Lamar, said:

“The statutes, in placing the whole business of the Department under the supervision of the Secretary, invest him with authority to review, reverse, amend, annul, or affirm all proceedings in the Department, having for their ultimate object to secure the alienation of any portion of the public lands, or the adjustment of private claims to lands with a just regard to the rights of the public and of private parties.”

In *New Orleans v. Pain* (147 U. S., 261, 266-267), was involved the power of the Secretary of the Interior to set aside a survey of the public lands already approved, and to approve a subsequent survey thereof. In passing upon the question, the court, speaking through Mr. Justice Brown (p. 266), says:

“If the Department was not satisfied with this (the first) survey, there was no rule of law standing in the way of its ordering another. Until the matter is closed by final action, the proceedings of an officer of a department are as much open to review or reversal, by himself or his successor, as are the interlocutory decrees of a court open to review upon the final hearing.”

In *Williams v. the United States* (138 U. S., 514, 523-524), the Government under the act of June 16, 1880, had certified to the State of Nevada certain lands which the State subsequently sold to Williams. Thereafter, it was discovered by the Land Department that, in procuring the State of Nevada to have the lands certified to it, Williams committed a fraud. Thereupon the Attorney-General, at the request of the Secretary of the Interior, brought suit to set aside the certification to the State of Nevada. In disposing of the case, the court, speaking through Mr. Justice Brewer, said:

“The certification after selection by the State is to be approved by the Secretary of the Interior. This is no mere formal act. It gives to him no mere arbitrary discretion, but it does give power to prevent such a monstrous injustice as was sought to be accomplished by these proceedings. \* \* \* It is obvious, it is common knowledge, that in the administration of such large and varied interests as are intrusted to the Land Department, matters not foreseen, equities not anticipated, which are therefore not provided for by express statute, may sometimes arise and, therefore, that the Secretary of the Interior is given such superintending and supervising power which will enable him in the face of these unexpected contingencies to do justice.”

In *Brown v. Hitchcock* (173 U. S., 433, 476-478), the complainant filed a bill in equity against the Secretary of the Interior in this court, praying that the Secretary be restrained from holding certain lands in the State of Oregon, subject to entry under the general land laws of the United States, claiming that these lands had become the property of the State of Oregon, under the act of September 28, 1850, and the amendments thereto, known as the swamp-land act, and were included in a certain selection list filed by the State of Oregon, which list was approved by Secretary of the Interior Teller on September 16, 1882. In 1880 the State had sold these lands to one Owen, and by subsequent conveyance they had been transferred to the complainant; therefore, in December, 1888, Secretary of the Interior Vilas made and entered an order canceling and revoking said selection list. The main question involved in the suit was the power of Secretary Vilas to revoke and annul the order made by Secretary Teller, approving said selection list. In disposing of this question, the court, among other things, said:

“Until the legal title to public lands passes from the Government, inquiry as to all equitable rights comes within the cognizance of the Land Department.”

In *United States v. Schurz* (102 U. S., 378, 396), which was an application for a mandamus to compel the delivery of a patent, it was said:

“Congress has also enacted a system of laws by which rights to these lands may be acquired, and the title of the Government conveyed to the citizen. This Court has, with a strong hand, upheld the doctrine that so long as the legal title to



these lands remains in the United States, and the proceedings for acquiring it were as yet in fieri, the courts would not interfere to control the exercise of the power thus vested in that tribunal. To that doctrine we still adhere."

In the case of the United States, *ex rel. Riverside Oil Co., v. Hitchcock*, Secretary of the Interior, decided May 18, 1903, the court of appeals of the District of Columbia, among other things, said:

"Congress has constituted the Land Department, under the supervision and control of the Secretary of the Interior, a special tribunal with judicial functions, to which is confided the execution of the laws which regulate the purchase, selling, care, and disposition of the public lands. The court has no general supervisory power over the affairs of the Land Department, by which to control their decision upon questions within their jurisdiction."

It would seem from these cases that it is settled law that until title has passed from the Government, the Secretary of the Interior, under the general powers conferred upon him by the statutes heretofore cited, has power to review, correct, modify, reverse, or vacate any act or decision heretofore made by him or his predecessor in office, in respect to the disposition of public lands. The power and duty of the Secretary in respect of the administration of the act of July 1, 1902, are in all essential respects of similar import as those conferred upon him by the public land laws; and, therefore, upon the authority of the cases above cited, it would seem to be clear that until the title to the lands here involved as well as the interest of the Government therein—and it has an interest, although remote and contingent—has been finally divested by the issue of patents as provided in said sections 58 and 59 of the act of 1902, the Secretary has the power to reconsider, correct, or annul his own decisions made in the due administration of said act of July 1, 1902, and hence it follows that in the opinion of the court the action of the Commission in segregating said 157,600 acres of land, even if done under the direction and with the approval of the Secretary of the Interior, does not oust the jurisdiction of the Secretary to reconsider and correct the same.

If, however, the right to reconsider, correct, and amend his own and the acts and proceedings of the Commission, as a specially constituted tribunal to carry into effect the acts of 1898 and 1902, does not come within the scope of the general powers vested in the Secretary of the Interior, such power seems to be expressly conferred upon him by section 22 of the latter act, viz, that of July 1, 1902, which reads as follows:

"Sec. 22. Exclusive jurisdiction is hereby conferred upon the Commission to the Five Civilized Tribes, under the direction of the Secretary of the Interior, to determine all matters relative to the appraisement and the allotment of lands."

As I read the decided cases upon this point, it seems to be settled law that when an act is required to be done "under the direction of the Secretary of the Interior," this, in effect, requires his approval before such act becomes complete and effective and, therefore the phrase "under the direction of the Secretary of the Interior" as used in the act of July 1, 1902, imposes upon the Secretary the power and duty of directing and supervising all acts and proceedings of the Commission under that act, and certainly the segregation of the 157,600 acres is not only one of the "matters relating to the allotment of lands" but it is a condition precedent to their allotment under section 23 of the act, 1902. (*Bishop of Nisqually v. Gibbon*, 158 U. S., 155, 167); (*Knight v. Land Association*, 142 U. S., 161, 177).

In the oral argument counsel for the complainants, in opposing this view, cited the case of *Northern Pacific Railway Company v. Barnes* (S. Dak., 366, 369); but, as was claimed by counsel for defendants at the time, and as it seems to the court, the *South Dakota* case is opposed to the doctrine laid down by the Supreme Court of the United States in *Knight v. Land Association* (142 U. S., 161), and other cases cited in their brief.

In the *Knight* case Mr. Justice Lamar, in speaking for the court, said:

"The phrase, 'under the direction of the Secretary of the Interior,' as used in these sections of the statutes (referring to certain sections of the Revised Statutes relating to the duties of the Commissioner of the General Land Office in respect to the surveying and sale of the public land to be performed 'under the direction of the Secretary of the Interior'), is not meaningless, but was intended as an expression in general terms of the power of the Secretary to supervise and control the extensive operations of the Land Department of which he is the head, and 'such supervision,' says the court, 'may be exercised by direct orders or by review on appeal.'"

The wisdom of Congress in thus giving to the Secretary of the Interior supervisory power over the segregation of these lands is made manifest by the very confusion and mischief that would result were this segregation, with its many errors, to stand as the final and finished work of the Commission. The Secretary, however, possessing

and claiming, as he does, the power to revise, correct, and, if necessary, to amend in whole or in part these acts and proceedings of the Commission, and thus prevent the very evils that might otherwise follow, has now before him a full report of such acts and proceedings with a view of determining whether they are in conformity with the acts of Congress pertaining thereto, or not.

The question thus presented is, has this court the power to interpose by injunction to restrain him from doing this?

If the court is correct in its conclusion that this is a matter within the jurisdiction and control of the Secretary, then it must be admitted that its determination involves the exercise of judgment and discretion, and therefore can not be enjoined or controlled by the judicial power.

It has been the uniform holding of the Federal courts that an executive officer, while engaged in the performance of a duty involving the exercise of judgment and discretion, can not be interfered with in respect to such duty by the judicial power.

In the case of *New Orleans v. Pain* (147 U. S., 261), Mr. Justice Brown, in delivering the opinion of the court, said:

"The general rule is that the judicial power will not interpose, by mandamus or injunction, to limit or direct the action of departmental officers in respect of matters pending within their jurisdiction and control. \* \* \* That if he (meaning the head of a department) were engaged in the performance of a duty which involved the exercise of discretion or judgment he was entitled to protection from any interference by the judicial power."

In *Brown v. Hitchcock* (173 U. S., 433, 477), the court, among other things, said: "As a general rule, no mere matter of administration in the various Executive Departments of the Government can, pending such administration, be taken away from such departments and carried into the courts; those departments must be permitted to proceed to the final accomplishment of all matters pending before them, and only after that disposition may the courts be invoked to inquire whether the outcome is in accord with the laws of the United States."

It is said by the court in *Dunlap v. Black* (p. 48):

"The court will not interfere by mandamus with the executive officers of the Government in the exercise of their ordinary official duties, even where those duties require an interpretation of the law, the court having no appellate power for that purpose. \* \* \* Whether, if the law were properly before us for consideration, we should be of the same opinion or of a different opinion is of no consequence in the decision of the case.

"In *Kirwin v. Murphy* (189 U. S., 55) the court quotes with approval the following passage found in the case of *Litchfield v. The Register and Receiver* (9 Wall., 577, 579):

"The principle has been so repeatedly decided in this court that the judiciary can not interfere, either by mandamus or injunction, with executive officers, such as the respondents here, in the discharge of their official duties, unless those duties are of a character purely ministerial and involving no exercise of judgment or discretion, that it would be useless to repeat it here."

In *United States ex rel. Riverside Oil Company v. Hitchcock* (decided May 18, 1903, by the court of appeals, District of Columbia), the court says that—

"Neither an injunction nor mandamus will lie against an officer of the Land Department to control him in discharging an official duty which requires the exercise of his judgment and discretion. \* \* \* Mandamus has never been regarded as the proper writ to control the judgment and discretion of an officer as to the decision of a matter which the law gave him the power and imposed upon him the duty to decide for himself."

Associate Justice Miller, in delivering the opinion of the court in *Gaines v. Thompson* (7 Wall., 347, 352, 353), said that this doctrine—

"\* \* \* Is as applicable to the writ of injunction as it is to the writ of mandamus.

"In the one case the officer is required to abandon his right to exercise his personal judgment, and to substitute that of the court, by performing the act as it commands. In the other he is forbidden to do the act which his judgment and discretion tell him should be done. There can be no difference in the principle which forbids interference with the duties of these officers, whether it be by writ of mandamus or injunction."

In *Mississippi v. Johnson*, supra, 498, the court draws a distinction between a ministerial and judicial duty in the following language:

"A ministerial duty, the performance of which could, in proper cases, be required of the head of a department by judicial process, is one in respect to which nothing is left to discretion. It is a simple, definite duty, arising under conditions admitted or proved to exist, and imposed by law."

It is settled law that where the law prescribes that before an act shall be final it must receive the approval of the head of a department, the duty of approval is a judicial and not a ministerial duty. (See *Wisconsin Central Railroad Company v. Price*, supra; *United States v. Williams* (138 U. S., supra); *Ops. Attorney-General*, Vol. XIV, pp. 50, 52, 645.)

If there is any plain ministerial duty to be performed by the Secretary in this whole matter, it is found in section 59 of the act of 1902, which requires him to approve the patents issued to allottees for their respective allotments by the principal chief of the Cherokee Nation; that is to say, if the Secretary were to refuse to approve such patents, after the same have been regularly executed for delivery by the principal chief, he could not excuse himself from so doing by insisting that such act was one of administrative propriety involving judicial discretion rather than a merely ministerial duty.

Mr. Justice Miller in *Johnson v. Towsley* (13 Wall., 7283):

"When the law is confided to a special tribunal, the authority to hear and determine such matters arising in the course of its duties, the decision of that tribunal, within the scope of its authority, is conclusive upon all others."

1. The solicitors for complainants have strongly insisted and ably argued, however, "that Congress, in and by section 25 (act of 1898) and section 23 (act of 1902), intended to provide, and did provide, for the judicial ascertainment and adjudication of the 'rights' of the Delawares to the lands selected and occupied by them (including their titles), and for the 'segregation' of said lands in such manner as shall preserve them in such condition that the judgment of the court, when rendered, may be applied thereto."

2. "That in this plain purpose and scheme of legislation there is no room or occasion for the exercise of any 'discretion' by the Secretary of the Interior," Congress having thus committed to the judiciary the jurisdiction which, in respect to the public lands, rests with the Secretary; that when the judgment of the Supreme Court shall have been rendered and the Commission shall proceed to the work of allotment in conformity to the terms of the judgment and the individual rights of the Delawares, the question of the duty of the Secretary, in respect of that situation and the correction of errors, will be presented.

If you concede the first proposition, viz, that Congress has by these two sections committed to the judiciary the jurisdiction which, in respect to the public lands, rests with the Secretary, and has also committed to the judiciary the adjudication, not only of the rights of the Delawares to the lands selected and occupied by them, but the very titles to them, as well as the segregation of said lands, in such manner as the court may determine appropriate to its judgment, then you may well concede the second, viz, that in this scheme of legislation there is neither room nor occasion for the exercise of "discretion" by the Secretary of the Interior, and that the statute lays no duty upon him until it comes to the matter of allotment in conformity to the court's judgment, when the question of correcting errors may be presented.

But why should Congress have made this case so exceptional? And especially when it has been the settled and uniform policy of the Government, ever since the establishment of the Department of the Interior more than half a century ago, to place the supervision and control of the Indians and of Indian affairs in the hands of the Secretary of the Interior; a policy that certainly is not to be abrogated unless the intention so to do is plainly manifest in the statute. The court has already called attention to these two sections in connection with section 22 of the act of 1898, as clearly imposing upon the Secretary the duty of directing said segregation and officially approving it before it can become effective, and that this duty is not ministerial but judicial in its character and therefore calls for the exercise of a sound discretion.

The jurisdiction thus conferred upon the Commission and Secretary is, in the opinion of the court, quite apart from that conferred upon the Court of Claims and the Supreme Court of the United States on appeal. A controversy having arisen between the Cherokee Nation and the Delawares in respect to these lands, that is, as to what the Delawares obtained by their purchase of 1867 and their "rights" under that contract, Congress determined that this controversy should be made the subject of judicial inquiry and adjudication. It therefore conferred jurisdiction upon the Court of Claims with the right of appeal to the Supreme Court of the United States, for that purpose and for no other. The jurisdiction thus conferred upon the judiciary was exclusive, leaving nothing for the determination of the Secretary of the Interior, so far as the subject-matter of the suit, or the "rights" of the Delawares therein, are concerned. The jurisdiction of the Commission and the Secretary of the Interior, touching the segregation and allotment of said lands, is equally exclusive, leaving nothing, so far as the segregation and allotment of said lands are concerned, for the determination of the courts.

The jurisdiction of the court and of this special tribunal being thus independent of each other as to their respective duties, and Congress having framed the act of 1902 so as to meet the situation, whether the segregation preceded or succeeded the final judgment of the court, it must be assumed from that fact and from the very issue involved in the suit that in the meantime the rights of both parties, "as the same may be finally determined by the court," are fully and absolutely protected, as is expressly provided for in section 23, and moreover, that when the court renders its judgment there can be no possible difficulty in allotting and disposing of said lands to the Delawares "in conformity to the terms of the judgment and their individual rights thereunder."

In the course of the argument in this case, which was able and exhaustive on both sides, considerable stress was laid upon the fact that, by stipulation of counsel, the amended schedule of segregated lands, so called, has been embodied in the record of the suit now pending in the Supreme Court of the United States, and therefore the judgment of that court must necessarily be based upon such schedule. Even the Commission, in its report of April 20, 1903, expressed some apprehension that the Supreme Court, in deciding the Delaware suit, may approve this schedule, thus made a part of the record in that case. In my view of the case this apprehension is entirely groundless. No stipulation of counsel can oust either the court, or the Commission, or the Secretary of the Interior, of their respective jurisdiction and duty under the law.

This attempted segregation did not thereby become complete and final, and it can not become so until the specific lands to be set apart for the Delawares have been duly selected and properly and correctly scheduled; exclusive jurisdiction to do this is conferred upon the Dawes Commission, subject to the direction of the Secretary of the Interior, as provided in section 23 of the act of 1902. While an imperfect, unapproved, and impossible schedule has thus found its way into the record in the pending suit of the Delawares against the Cherokees, it can be of no binding force until it has been revised and amended so as to meet the requirements of the statutes, and is then finally ratified and affirmed by the Commission and the Secretary of the Interior, to whom are given exclusive jurisdiction in this behalf.

The province of the court is not to approve such schedule, but it is simply to decide the questions involved in that suit, and to determine what interest the Delaware citizens have in the lands and funds of the Cherokee Nation.

The segregation of the 157,600 acres was not, and is not, a condition precedent to the institution and final determination of said suit; the final judgment of the court is not to apply to a given schedule of segregated lands embodied or to be embodied in the record of the case, but on the contrary it was and is to apply to the specific lands embraced in the final and completed segregation, when made by the Commission, under the direction of the Secretary, whether that segregation be made before the bringing of the suit, or during its pendency, or after final judgment therein.

1. Section 25 of the act of 1898 provides that before any allotment shall be made in the Cherokee Nation the Commission shall segregate therefrom 157,600 acres, but that such segregation shall be subject to the judicial determination of the rights of said descendants and the Cherokee Nation, under their agreement of April 8, 1867.

2. The same section authorizes the bringing of the suit now pending in the Supreme Court for that purpose.

3. Section 23 of the act of 1902 declares that "all Delaware Indians who are members of the Cherokee Nation shall take lands and share in the funds of the tribe as their rights" (thereto) "may be determined by the judgment of the Court of Claims, or by the Supreme Court if appealed \* \* \* in the suit now pending."

Therefore it was that, inasmuch as the Commission had not, up to that time (July 1, 1902), segregated the 157,600 acres or made any allotments to the Cherokee Nation, as they were empowered to do under section 25 of the act of 1898; and might not do so until after the Supreme Court had decided said suit and thereby determined the rights of the parties under the agreement of 1867, that it was expressly provided by section 23 what should be done by the Commission in the meantime, viz:

(a) "If said suit be not determined before said Commission is ready to begin the allotment \* \* \* the Commission shall cause to be segregated 157,600 acres of land, etc. \* \* \* such lands so to remain, subject to disposition according to such judgment as may be rendered in said cause.

(b) "And said Commission shall thereupon proceed to the allotment of the remaining lands."

The necessary inference being that, if the suit was decided before the Commission is ready to begin the allotment, they must proceed in the same way, viz:

1. Segregate the 157,600 acres for the Delawares.
2. Allot the remaining lands of the Cherokee Nation.

But in any event, whether this segregation and allotment took place before or after

the determination of said suit, the 157,600 acres once segregated were to be kept segregated—

“Subject to disposition according to such judgment as may be (or may have been) rendered in said cause, and when (such) final judgment is rendered (said Commission), shall allot lands to such Delawares in conformity to the terms of the judgment and their individual rights thereunder.”

In view of the fact that section 23 also provides that “nothing in this act (1902) shall in any manner impair the rights of either party to said contract (1867) \* \* \* or interfere with the holdings of the Delawares under the same until their rights \* \* \* are determined by the courts in their suit now pending.”

There was nothing in the situation demanding that the 157,600 acres should first be segregated and a schedule thereof made a part of the record in that case in order that the judgment might be effective. In the very nature of the case the judgment can operate with equal certainty and with equal justice on these segregated lands, whether such segregation occurs before or after such judgment is rendered. The only possible way to defeat this would be through an actual and conflicting allotment of the remaining lands (such as was partially effected in this case) before the segregation has been regularly and finally completed.

Congress has wisely provided against such contingency—

“1. By providing in effect that the segregation to be made by the Commission is to be made under the direction of the Secretary of the Interior, which in effect means subject to his approval.

“2. That no allotment of the remaining lands can be legally made until there is first segregated and set apart therefrom the 157,600 acres for the Delawares in manner and form required by the statutes.”

It therefore follows that as no allotment can be made until the segregation is finally and correctly completed, and as such segregation will not be so completed until all necessary amendments and corrections thereof have been made and finally approved, that the rights of both parties to the contracts of 1867 and the holdings of the Delawares thereunder, as the same may be finally determined by the court, are amply safeguarded, and that the judgment of the court, which is to determine the rights of the Delawares in and to the lands and funds of the Cherokee Nation generally, and not the title to specific lands and allotments, will operate with equal effect upon the 157,600 acres, whether the same be segregated before or after the rendition of such judgment by the Supreme Court of the United States.

“It is not \* \* \* the mere fact that a public officer is attempting to exercise a void authority which induces a court of equity to restrain him, but that, notwithstanding he is a public officer, he is about by such exercise to do an act which brings the case within its peculiar jurisdiction.”<sup>5</sup> (Eaton on Equity, p. 604.)

So, in this case, there is nothing in the light of the sworn answer of the Secretary of the Interior and accompanying affidavits and exhibits filed herein to warrant the relief prayed for, either on the ground of irreparable injury to the rights of the complainants, the avoidance of a multiplicity of actions or proceedings to correct alleged wrongs, or upon any other ground set up in the bill or falling within any one of the acknowledged heads of equity.

In view of the opinion thus announced by the court, the injunction prayed for in this case is denied and the temporary restraining order discharged.

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#### EXHIBIT 53.

##### *Public notice.*

This office having official information of the refusal by the supreme court, District of Columbia, of the injunction asked for relating to the application for allotment by certain Cherokee citizens of lands embraced in the Delaware segregation, and of the discharge of the temporary restraining order concerning the same, the following order of the Commission to the Five Civilized Tribes is again put into operation, viz:

“That Cherokee citizens not of Delaware blood occupying lands embraced in the Delaware segregation shall be permitted to make application for such lands, and any claimants may institute contest proceedings for the same, provided that all such applications and contests shall be held suspended pending the determination of the rights of claimants to such lands as provided in the Cherokee agreement approved July 1, 1902.”

C. R. BRECKINRIDGE,  
*Commissioner in Charge Cherokee Land Office.*

Respectfully,

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## EXHIBIT 54.

In the supreme court of the District of Columbia. *George Bullette et al. v. Ethan Allen Hitchcock, Secretary of the Interior, et al.* No. 23,991. Equity Doc. 53.

This cause coming on to be heard upon bill of complaint and exhibits, the answer of the defendant, Ethan Allen Hitchcock, Secretary of the Interior, and affidavits, the amended bill of complaint and exhibits, and the answer of said defendant Hitchcock thereto and exhibits, and being argued by counsel, it is, by the court, this 6th day of October, A. D. 1903, adjudged, ordered, and decreed that the preliminary injunction prayed for in said bill be, and it is hereby, denied, and that the temporary injunction heretofore granted in this cause be, and it is hereby, discharged.

THOS. H. ANDERSON, *Justice.*

A true copy.

Test:

[SEAL OF COURT.]

J. R. YOUNG, *Clerk.*

By F. E. CUNNINGHAM, *Assistant Clerk.*

## EXHIBIT 55.

OCTOBER 6, 1903.

THE COMMISSION TO THE FIVE CIVILIZED TRIBES,

*Muscogee, Ind. T.*

GENTLEMEN: Section 22 of the act of July 1, 1902 (32 Stat., 716, 718), entitled "An act to provide for the allotment of the lands of the Cherokee Nation, for the disposition of town sites therein, and for other purposes," as follows:

"Exclusive jurisdiction is hereby conferred upon the Commission to the Five Civilized Tribes under the direction of the Secretary of the Interior, to determine all matters relative to the appraisement and the allotment of lands."

Section 23 (pp. 718, 719) provides that—

SEC. 23. All Delaware Indians who are members of the Cherokee Nation shall take lands and share in the funds of the tribe, as their rights may be determined by the judgment of the Court of Claims, or by the Supreme Court if appealed, in the suit instituted therein by the Delawares against the Cherokee Nation, and now pending; but if said suit be not determined before said Commission is ready to begin the allotment of lands of the tribe as herein provided, the Commission shall cause to be segregated one hundred and fifty-seven thousand six hundred acres of land, including lands which have been selected and occupied by Delawares in conformity to the provisions of their agreement with the Cherokees dated April eighth, eighteen hundred and sixty-seven, such lands so to remain, subject to disposition according to such judgment as may be rendered in said cause; and said Commission shall thereupon proceed to the allotment of the remaining lands of the tribe as aforesaid. Said Commission shall, when final judgment is rendered, allot lands to such Delawares in conformity to the terms of the judgment and their individual rights thereunder. Nothing in this act shall in any manner impair the rights of either party to said contract as the same may be finally determined by the court, or shall interfere with the holdings of the Delawares under their contract with the Cherokees of April eighth, eighteen hundred and sixty-seven, until their rights under said contract are determined by the courts in their suit now pending against the Cherokees, and said suit shall be advanced on the dockets of said courts and determined at the earliest time practicable.

The suit referred to in section 23 of the act was decided by the Court of Claims adversely to the Delawares on February 2, 1903, and was subsequently appealed by them to the Supreme Court of the United States, where it is now pending.

April 20, 1903, your Commission made a report of its action with respect to compliance with the provisions of said section 23, from which report it appears, among other things, as follows: That on December 16, 1902, there was filed with your Commission by Walter S. Logan, claiming to be the attorney for the Delaware Indians, a schedule of lands aggregating 157,600 acres selected by Delawares and claimed by them under the agreement of April 8, 1867, with the Cherokee Nation; that on December 17, 1902, by resolution, your chairman was instructed to "cause to be set aside and segregated 157,600 acres of land in the Cherokee Nation in accordance with the provisions of section 23 of the act of Congress approved July 1, 1902 (Public, No. 241), subject to disposition according to such judgment as may be rendered in the case of the Delaware Indians *v.* The Cherokee Nation now pending in the United

States Court of Claims and as shown by the description of said land" in the schedule referred to; that on January 1, 1903, your Commission opened the Cherokee allotment office at Vinita, Ind. T., and proceeded to the allotment of the remaining lands of the Cherokee tribe; that on January 23, 1903, your Commission received from Richard C. Adams, claiming to represent the Delaware Indians, an alleged corrected schedule of lands selected by them; that since January 1, 1903, a number of Cherokee citizens have made application for allotments of lands embraced wholly or in part in the aforesaid schedules, claiming to have been for years in the possession of the lands asked for and to own valuable improvements thereon, and that "no Delaware citizen has ever occupied such lands or owned any improvements thereon;" that a number of Delaware Indians, since the filing of said schedules and the opening of the allotment office, have made requests to be "allowed to make final selections of land containing their improvements and upon which they reside, claiming that no portion of the lands is included within the said Delaware segregation;" that the Commission has been advised that there are "numerous other Delaware citizens whose improved lands are not included within the said segregation," and "whose property rights are thus unprotected." Your Commission states, among other things, that it believes that the lands embraced in said schedules "have not been selected with a due regard for the interests of either the Delaware citizens generally or other citizens of the Cherokee Nation." The schedules of lands so selected by the Delaware Indians were not transmitted to nor formally approved by the Secretary of the Interior.

The act referred to above imposes upon your Commission the duty of investigating and determining what lands are subject to segregation, and your Commission can not substitute the judgment of the Delaware Indians, or any of them, or anyone acting for them or any of them, for your own judgment in this matter. To be effective the segregation must be approved by the Secretary of the Interior, and pending such approval your Commission should not proceed to allot any of the lands in the Cherokee Nation. When the segregation is made and approved no application for allotment of any of the lands so segregated should be received by your Commission pending the determination of the suit in question.

It seems clear that the list or schedule of lands does not meet the requirement of the statute in that it does not include all the lands which have been selected and occupied by Delawares and in that it does include lands which no Delaware has selected and occupied, but to which other Cherokee citizens have claims based upon alleged settlement and improvements thereon. You will, therefore, proceed at once to make such examination and investigation as will enable you to determine what tracts should be added to said list and what tracts now embraced therein should be excluded, care being taken to make the list cover the full quantity of land required to be segregated. You will as soon as possible report the results of such investigation, with suitable recommendations in the premises. In the meantime, and until the segregation shall have become effective, you will suspend all proceedings looking to the allotment of lands in the Cherokee Nation.

Very respectfully,

THOS. RYAN, *Acting Secretary.*

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EXHIBIT 56.

DEPARTMENT OF THE INTERIOR,

Washington, October 9, 1903.

MR. RICHARD C. ADAMS,  
*Bond Building, Washington, D. C.*

SIR: The Department is in receipt of yours of the 6th instant inclosing a copy of a letter addressed by you to the Commission to the Five Civilized Tribes. In said letter to the Commission you state that you desire on behalf of the Delaware Indians to be allowed "to answer as to each particular tract that is in dispute; that the complete record of the same may be made and transmitted with your report to the Secretary, before whom we can have a last chance to present our side of the case."

A copy of the instructions to the Commission has been sent you, and doubtless there will be no difficulty in your being present or represented before the Commission when they proceed to consider the conflicting rights of parties to the tracts in controversy, if you so desire. The Department, however, will not expect the Commission to delay action on account of the absence of parties or attorneys representing them in respect of the disputed tracts. Prompt, efficient, and just action will be expected of the Commission.

A copy of this letter has this day been sent to the Commission for its information.

Respectfully,

THOS. RYAN, *Acting Secretary.*

## EXHIBIT 57.

COMMISSION TO THE FIVE CIVILIZED TRIBES,  
*Tahlequah, Ind. T., October 12, 1903.*

RICHARD C. ADAMS,  
*Bond Building, Washington, D. C.*

DEAR SIR: This office is in receipt of your letter of the 6th instant, stating that the Secretary of the Interior has advised you in person that he has instructed this Commission to report as to what lands should be omitted from the Delaware segregation, and what lands should be included therein, and requesting on behalf of the Delawares that you be allowed to answer as to each particular tract that is in dispute, that the complete record of the same be made and transmitted with the Commission's report to the Secretary, in order that you may have a last chance to present your side of the case.

You request to be notified immediately at what time and place the "contest" will begin. In reply I have to say that this office has not yet been instructed by the Commission with respect to putting into execution the order of the Secretary, the method of doing which will probably require careful consideration; but your wish will be submitted to the Commission with the request that you be advised of its action in regard thereto.

Respectfully,

C. R. BRECKINRIDGE,  
*Commissioner in Charge Cherokee Land Office.*

## EXHIBIT 58.

DEPARTMENT OF THE INTERIOR,  
*Washington, October 15, 1903.*

MR. RICHARD C. ADAMS,  
*Bond Building, Washington, D. C.*

SIR: The Department is in receipt of your communication, dated October 9, 1903, relative to the claims of the Delaware Indians, stating, among other things, that "all the Delawares want is fair treatment at the hands of the Dawes Commission;" also requesting "permission to appear before the Dawes Commission at any sittings it may have for the purpose of finally determining what lands shall be included in the Delaware segregation, and that a complete record and report may be made of such proceedings, in order that we (you) may have the opportunity to file exceptions for review" by this Department, in case you consider that the segregation has not been made in accordance with the law and in full justice to the Delawares.

It is evident that when your said letter was written you had not received departmental letter of October 9, in response to yours of the 6th instant, inclosing a letter addressed by you to the Dawes Commission, asking to be allowed "to answer as to each particular tract that is in dispute, that the complete record of the case may be made and transmitted with your (their) report to the Secretary, before whom we (you) can have a last chance to present our side of the case."

In said letter you were advised that a copy of the instructions to the Commission had been sent you, and "doubtless there will be no difficulty in your being present or represented before the Commission when they proceed to consider the conflicting rights of parties to the tracts in controversy, if you so desire. The Department will not expect the Commission to delay action on account of the absence of parties or attorneys representing them in respect of the disputed tracts. Prompt, efficient, and just action will be expected of the Commission."

It is hardly necessary to assure you that the Department earnestly desires that its every action shall be in strict accord with the principles of justice as to the rights of both the Delawares and the Cherokees.

Respectfully,

THOS. RVAN, *Acting Secretary.*

## EXHIBIT 59.

DEPARTMENT OF THE INTERIOR,  
*Washington, October 17, 1903.*

MR. R. C. ADAMS,  
*Bond Building, Washington, D. C.*

SIR: The Department is in receipt of a communication from the Commissioner of Indian Affairs, dated October 10, 1903, forwarding a report from the Commission to



the Five Civilized Tribes, dated October 2, upon your letter of September 9, protesting against the action of the Commission in allowing Cherokee to file on lands listed for the Delaware Indians in the Cherokee Nation, which was referred to said Commission for report on September 19, 1903.

The Commissioner closes his report by a quotation from departmental letter of October 6, 1903, directing the Dawes Commission to proceed to make an examination and investigation and report the list of tracts which should be segregated for the Delawares to the Department for consideration. The Commissioner states:

"All complaints can now be investigated and passed upon by the Commission and the Department upon their merits; and there is no reason why any land in the possession of the Delawares should not be included in the list, or why any land claimed by the Cherokee should be included therein."

Respectfully,

THOS. RYAN, *Acting Secretary.*

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EXHIBIT 60.

COMMISSION TO THE FIVE CIVILIZED TRIBES.

*Tahlequah, Ind. T., October 21, 1903.*

RICHARD C. ADAMS,  
*Bond Building, Washington, D. C.*

DEAR SIR: Replying to your letter of September 8, asking to be furnished with the names of persons who have made application for land embraced in the Delaware segregation, their post-office addresses, etc., you are advised that this information has been furnished to Mr. George S. Chase, who personally called for it at the Cherokee land office.

Respectfully,

C. R. BRECKINRIDGE,  
*Commissioner in Charge Cherokee Land Office.*

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EXHIBIT 61.

DEPARTMENT OF THE INTERIOR,

*Washington, October 21, 1903.*

MR. RICHARD C. ADAMS,  
*Bond Building, Washington, D. C.*

SIR: The Department is in receipt of a report from the Commission to the Five Civilized Tribes, dated October 7, 1903, upon your letter dated September 14, 1903, alleging that very great wrongs are being perpetrated upon the Delaware Indians in the Indian Territory, by reason of the failure of the United States to protect them in their treaty rights, specially charging that said Commission, after notice of the restraining order issued by the supreme court of the District of Columbia, "continued to receive selections and applications for allotments" upon lands alleged to have been segregated for the Delawares.

The Commission denies said allegation and refers to its report of October 2, 1903, in which it was stated that a "mistake was made in checking over lands embraced in the Delaware segregation when certain applications were made, and through a mistake was signed and sent out. If there has been any other notice except the one sent to Mr. R. C. Adams himself the Commission at this time is not aware, and certainly no attempt was made to evade the restraining order referred to by Mr. Adams in his letter, and no intentional violation was made of it by the Commission, as strict orders were given, immediately upon notice that said restraining order had been issued, that no action whatever should be taken by the Land Office regarding lands embraced within the Delaware segregation."

In view of the instructions given the Commission on October 6, 1903, a copy of which has been furnished you, it is not deemed necessary to comment further upon the report of the Commission.

Respectfully,

THOS. RYAN, *Acting Secretary.*

## EXHIBIT 62.

In the supreme court of the District of Columbia, holding an equity court. George Bullette et al., complainants, *v.* Ethan Allen Hitchcock et al., defendants. In equity, No. 23991.

At the request of Walter S. Logan, Nathaniel Wilson, and George S. Chase, esqs., solicitors for complainants, I hereby fix Friday, the 23d day of October, 1903, at 3 o'clock p. m., and the law offices of said Nathaniel Wilson, esq., in the Pacific Building, Nos. 622 and 624 F street NW., in the city of Washington, D. C., as the time and place when and where testimony on behalf of the complainants in the above-entitled cause will be taken before me.

E. L. WHITE,  
*Examiner in Chancery.*

MORGAN H. BEACH, Esq.,  
*Solicitor for Defendants:*

Please take notice that at the time and place fixed in the foregoing order we shall proceed to take testimony on behalf of the complainants in the above-entitled cause.

WALTER S. LOGAN,  
NATHANIEL WILSON,  
GEORGE S. CHASE,  
*Solicitors for Complainants.*

Due and sufficient service of a copy of the foregoing order and notice is hereby acknowledged.

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*Solicitor for Defendants.*

## EXHIBIT 63.

In the supreme court of the District of Columbia. George Bullette et al., complainants, *v.* Ethan Allen Hitchcock et al., defendants. In equity, No. 23991.

Be it remembered that pursuant to the foregoing and annexed notice, at an examination of witnesses begun and held on the 23d day of October, 1903, and at other times agreeably to adjournments, as hereinafter stated, personally appeared before me, Enoch L. White, an examiner in chancery of the supreme court of the District of Columbia, the within-named Tams Bixby, who, being produced as witness of lawful age for and on behalf of the complainants herein, and being first duly sworn and cautioned to tell the truth, the whole truth, and nothing but the truth touching the matters at issue in the above-entitled cause, did depose and say as follows:

## COMPLAINANTS' TESTIMONY.

WASHINGTON, D. C., *October 23, 1903—3 o'clock p. m.*

Met pursuant to notice at the office of Nathaniel Wilson, in the Pacific Building.

Present: Nathaniel Wilson, esq., solicitor for the complainants, and Richard C. Adams, one of the complainants; Morgan H. Beach, esq., and W. C. Pollock, esq., solicitors for the defendants. Whereupon

Tams Bixby, a witness of lawful age, called by and on behalf of the complainants, having been first duly sworn, is examined.

By Mr. WILSON:

Q. Please state your name, your residence, and occupation.—A. My name is Tams Bixby; my residence Red Wing, Minn.; I am 47 years old.

Q. State your position or occupation.—A. My position is a member of the Commission to the Five Civilized Tribes.

Q. How long have you been a member of the Commission you speak of?—A. About six and a half years.

Q. This is an examination of you as a witness in the case of Bullette against the Secretary of the Interior and others in equity, No. 23991, in the supreme court of the District of Columbia. Were you served with process in this cause as a defendant?—

A. I expect so. I do not know it by that number.

Q. You filed an affidavit, or you made an affidavit which was filed in this cause?—A. I made an affidavit last spring.

Q. The affidavit I inquire of purports to have been made on the 13th of June, 1903, and is marked and filed in the case. Please say if you identify your signature to it.—A. Yes, sir; that is my signature.

Q. When did you enter upon your duties as member of the Commission commonly known as the Dawes Commission?—A. I think it was about the 23d day of May, 1897.

Q. Where were the headquarters of the Commission at that time?—A. Fort Gibson, Ind. T.

Q. From that time to the present time you have been continuously a member of said Commission?—A. Yes, sir.

Q. Where were you at the time of the passage of the act known as the Curtis Act, approved June 28, 1898?—A. I am not certain whether I was in Washington or in the Territory.

Q. What was your position on or in relation to the Commission at that time?—A. I was acting chairman.

Q. Who was the chairman?—A. Henry L. Dawes.

Q. At the time of the passage of that act was there in the records or in the office of the Commission any list, record, or description of the 157,600 acres of land known as the land purchased by the Delawares of the Cherokees?

(At this point the defendant thinks proper to interpose a general objection which will be applicable to the examination of this witness:

First. Whatever the action by this Commission may have been, it was subject to the approval of the Secretary of the Interior and was ineffective without such ratification.

Second. If later it be attempted to show any approval by the Secretary of the Interior, it is contended that within him was the power of review of such action on his part.

It is agreed that this objection may apply to any question that may be asked relating to the administration of the law or laws by the Secretary of the Interior.)

A. I do not know.

Q. Was there in the office of the Commission or among its records any list or description of the lands that were then occupied by the Delawares in the Indian Territory?—A. I do not know.

Q. Was there at that time any list of those who composed or were supposed to compose the Delaware tribe?—A. I could not say definitely as to that.

Q. Was there at that time in the office of the Commission or in its records any list of those composing the Cherokee Nation?—A. I could not answer as to the exact date when we obtained any of the records regarding lists of the Cherokee Nation. We have had such lists in our office for some time, but just when we procured them I could not say; whether before that time or after it I would be unable to state.

(In addition to the objections already stated, it is further objected that the Commission, as such, is not a party to this cause.)

Q. Was there at that time, in the office of the Commission, or had you yourself any personal knowledge of the descriptions of the lands in the Indian Territory then actually occupied by the Delawares?—A. I had no personal knowledge of the lands actually occupied by the Delawares.

Q. Had you at that time, namely, at the time of the passage of said act, any means of ascertaining from the records of the Commission what lands were then occupied by the Delawares?—A. I had no means of ascertaining, unless it might be thought or perhaps might be considered that schedules or claims that had possibly been filed by the Delawares would give that information; we had made no investigation.

Q. Was there at that time any paper, list, or schedule that had been filed with the Commission showing or purporting to show the lands actually occupied by the Delawares?—A. In our office there may have been; I do not know. If there was such a list filed at that time I may have known it, but do not recollect it now.

Q. At the time of the passage of the act had the lands in the Indian Territory been surveyed?—A. Yes, sir.

Q. All of them?—A. Yes, sir; that is my information and belief.

Q. Within your own personal knowledge what was the first thing done by the Commission or by its direction in respect of the segregation of the Delaware lands under the provisions of the act of 1898, or in respect of the preparation for such segregation?—A. I think the first act that was ever taken by the Commission in a formal way was an act done under the law of 1902.

Q. To the best of your knowledge and recollection, then, nothing was done under the act of 1898 in respect of or in preparation for the segregation of the Delaware lands?—A. I think the matter may have been considered, but no formal action was taken, as I recollect.

Q. As a matter of fact, what, if any, directions were given by the Secretary of the Interior or the Commissioner of Indian Affairs to proceed with or prepare for such segregation under the act referred to?

(Question objected to under the grounds already stated, and for the further ground that it is unfair to ask this witness as a matter of personal knowledge what is shown by the records of a semijudicial body.)

A. I do not have any personal recollection in regard to it.

Q. Do you mean that you do not remember anything in regard to the subject, or any instructions having been received?—A. I do not remember any instructions having been received under the act of 1898; there may have been.

Q. What personal knowledge have you of the application made by the Delaware Indians through their attorney in August, 1898, immediately after the passage of the act, for the segregation to be made?—A. I recollect that such an application was made by somebody representing the Delawares.

Q. Do you remember what, if any, action was taken on that application?—A. No, sir; I do not remember what the action was, nor just what was done. It may have and probably did receive consideration.

Q. You are familiar with the provisions of the act of July 1, 1902, so far as it relates to the Delaware lands, are you not?—A. Fairly so, I think.

Q. At the time of the passage of that act, what, to your personal knowledge, if any, action had been taken in respect of the segregation of the Delaware lands, or in respect of preparation for such segregation?—A. I do not remember of any formal action being taken up to that time.

Q. At the time of the passage of that act what knowledge had you derived from the records of the Commission or from your own personal information of the lands that had been selected or occupied by the Delawares?—A. Why, I had seen, I think, a map showing lands that were claimed by the Delawares, but I had never given it any careful examination or thought.

Q. What was the character of that map and where was it?—A. I do not recollect; could not say. I do not know whether it was a small map showing in red the lands claimed, or a big map, but I have a recollection that it was a map.

Q. Were you at that time the acting chairman of the Commission?—A. Yes, sir.

Q. Was there at that time in the possession of the Commission any list or schedule of those composing the Delaware tribe?—A. I could not say.

Q. Do you mean you do not remember?—A. I do not remember as to that time.

Q. Did you at that time, I mean at the date of the passage of the act, as chairman or as acting chairman of the Commission, know what lands were then actually occupied by the Delawares?—A. No, sir.

Q. Did you, from the records of the Commission or from any papers there on file, then have the means of knowing what lands were actually occupied by the Delawares?—A. I do not know whether there were any records on file at that time or not that would give that information. We had made no investigation at that time.

Q. You had at that time made no investigation into the matter of the segregation of the lands?—A. No formal investigation; no, sir.

Q. After the passage of the act of July 1, 1902, what to your personal knowledge was the first step taken or proceeding instituted by the Commission in respect of the segregation of the Delaware lands?

Mr. BIXBY. Do you mean what was the first formal action taken by the Commission?

Mr. WILSON. I mean just what the question asks: What was the first action of the Commission?

A. I can hardly answer intelligently unless I know what you wish to get at. The first formal step taken by the Commission as a body, as I recollect, was the passage of a resolution.

Q. Do you refer to the resolution adopted by the Commission on December 17, 1902?—A. I think that is the date.

Q. As shown by the exhibit in this case, No. 9 or D, that resolution directed the acting chairman to cause to be set aside and segregated the 157,600 acres of land in the Cherokee Nation, in accordance with the provisions of section 23 of the act of July 1, 1902. You were at that time the acting chairman?—A. I think so.

Q. Will you state what official action you took—what was actually done by you in the execution of that resolution?—A. I followed the direction of the resolution and had the lands claimed by the Delawares and described in a certain schedule or stipulation marked on the plats in red ink, on our land-office plats, that is to say, and set aside from allotment.

Q. Please state as definitely as you can precisely what papers or other evidences of claim, selection, or occupation of the Delaware lands you had in your possession or that came within your knowledge in the execution and performance of the duty imposed upon you by the resolution I have just referred to.—A. We had a list or schedule which was agreed to by the representatives of the Delawares and the Cherokees as being the list of the lands claimed by the Delawares, subject to the lawful claims, as I understood it, of other Cherokees, and that list we used as a basis to make these drawings on the maps.

Q. Was that list in print or written, and from whom was it received?—A. It was printed and was received from the representatives of the Delawares.

Q. Who were they, and how did it get into the possession of the Commission?—A. I am not certain whether Mr. Logan or Mr. Adams furnished the Commission with that list, but it was one or the other of them.

Q. It was actually, bodily there?—A. Yes, sir.

Q. Do you know when that schedule or report had been received?—A. No, sir; I could not tell the date.

Q. When you received the report or schedule, what steps, if any, were taken to verify the descriptions in the lists as being descriptions—I mean legal subdivisions—of lands actually occupied by the Delawares.—A. Why, we endeavored to see that the descriptions were in proper form and described accurately certain lands. We only knew as to whether they were occupied by Delawares by their statement that they were.

Q. How and to whom was that statement made?—A. Why, I think we either assumed that to be the case or it was so stated in the schedule.

Q. What actual knowledge had you, as a member of the Commission, or the other members of the Commission, so far as you know, of the actual condition of the tracts and subdivisions described in this schedule?—A. You mean the physical condition as to whether the Delawares were absolutely living on this land or not? Speaking for myself, I accepted their claim that they were occupying it, that being an evidence that they were entitled to claim it; and inasmuch as the representatives of the Cherokee Nation had agreed that that was to be the land selected for the Delawares, I did not go on the lands or make any effort to ascertain that they were actually occupied by the Delawares.

Q. Was any effort made by any other member of the Commission, or on their behalf, so far as you know, to ascertain who were the occupants of this land?—A. Not so far as I know as relating especially to Delawares. We had made investigations through the aid of surveyors, appraisers, and other field men for the purpose of ascertaining who did claim and occupy all the thickly settled portions of the Cherokee Nation, but that did not relate especially as to whether they were Delawares or not.

Q. Those investigations were not made with reference to the matter of segregation?—A. No, sir.

Q. Upon what information did you base your action in describing or designating the Delaware lands under the act referred to?—A. Upon the information contained in this stipulation.

Q. Were there any other papers, statements, petitions, or communications from any other persons or bodies?—A. There may have been, but so far as our action is concerned, at least speaking for myself, my action was based on the schedule or list or stipulation, or whatever it may be called.

Q. At the time of the action referred to, outside of and independent of the list furnished you as you have stated, what information had the Commission as to the locality and component tracts of the 157,600 acres of land bought by the Delawares?—A. We had a map that showed lands claimed to be selected and occupied by Delawares.

Q. And that was independent of and different from the map on which you in the resolution marked the tracts?—A. Yes, sir.

Q. That map had been prepared before?—A. It had been prepared by somebody. I do not know who.

Q. Do you know by whom that map had been prepared or when it first got into the Commission?—A. No, sir.

Q. It was there for some time before this resolution was passed?—A. Yes, sir.

Q. Please state as particularly as you can what knowledge you or the Commission had as to the particular subdivisions constituting the 157,600 acres of land claimed by the Delawares before the receipt of the schedule of which you have spoken.—A. I think we had that map before we received the schedule, but did not give the map any particular consideration. We took the schedule in making the list and set aside the land. I think we checked up the schedule and the map to see how nearly they agreed.

Q. From 1898 up to the time of the passage of the act of July 1, 1902, nothing had been done or nothing completely done to ascertain and make in the Commission any record showing what lands were actually occupied by the Delawares?—A. The resolution of December 17 was the first formal action taken by the Commission. Of course we had those matters, like others, under consideration at various times, but that was the first formal action taken by the Commission, as I recollect it.

Q. Will you state what was done by marking, by resolution, or other action of the Commission to indicate and complete the act of segregation required by law. In

other words, was the evidence of segregation preserved, and of what did the evidence of segregation consist?—A. We have in the land office a large plat prepared for each township in the entire nation, and upon these plats, as allotment progresses, the particular lands selected by each applicant are illustrated in different colored inks, and the name of the allottee placed thereon. On those township plats, which are the plats upon which we placed all the allotments, was marked in red ink the particular lands described in this schedule.

Q. Was it a mere coloring of the maps, or were there any letters or words to give any particular character?—A. On each of the township plats, as I recollect, it was only colored in red ink and no words written on the map. It is, however, thoroughly understood in the office that those lands or any other lands marked in colors are set aside. Frequently we set aside town-site reservations or reservations for schools, churches, and colleges in that way, and it is well known in the office what that means. They are not always written down except so far as the allottee's name is concerned.

Q. In respect of the subdivisions described in the list, will you state if there was prepared by the Commission, or in the Commission, and preserved any kind of list described as a list of segregated Delaware lands, or if any record was made in which the words "segregated" or "set apart" were used to describe what the Commission had done or undertaken to do?—A. I wrote Mr. Marr, a clerk in charge of the survey division at that time, who was in charge of all the plats to be used in the Cherokee land office when it opened, a letter in which I stated that herewith accompanied a list or schedule of Delaware lands, and directed him to set them aside on the plats of the Cherokee Nation. I could not remember the exact language that was used by me; I only know that I wrote that letter and furnished him with the schedule.

Q. Do you remember the date of that?—A. No, I do not. From my usual way of doing business it was within a few days of the date of the resolution.

Q. Do you know what action was taken by him in respect of that letter?—A. I know he put those lands on the plats, for I looked at them afterwards. He put them on the plats in red ink.

Q. That letter was written by you as chairman or acting chairman of the Commission?—A. Yes, sir.

Q. Your letter was an official letter and is preserved in the archives?—A. I presume so.

Q. Where was the list preserved and in whose personal custody was it? Where would it be kept?—A. It was in my personal charge, and I sent it to him. I suppose it is now in the Cherokee land office at Tablequah.

Q. At the time that that letter was written, was there in the Commission, or did there exist, so far as you know, any objection or adverse claim in respect of the subdivisions which were referred to in your letter and in the list?—A. Not that I know of.

Q. So far as you know, there was then no objection to your action from anybody?—A. There was none, so far as I know.

Q. What, if any, change was made in the list of segregated lands after the letter of which you speak was transmitted to Mr. Marr?—A. There were some corrections made.

Q. Please state as definitely as you remember exactly how these changes came to be made.—A. It was discovered in the first place that there were some not very material errors in the description, and the attention of the parties was called to this fact, and, as I remember it, the corrections were made upon agreement of the attorneys and then made on our maps and plats.

Q. At whose suggestion and at whose approval were these changes made?—A. They were suggested by Mr. Marr and approved by the attorneys representing both sides and myself.

Q. Is it not true that these changes were few and unimportant?—A. There were several of them, but so far as the amount of land involved, unimportant.

Q. How much land?—A. I could not say; but the first correction involved about 60 acres.

Q. Approximately, how much land was involved in all?—A. I could not remember.

Q. Not as much as a hundred acres?—A. I could not say; but I should think not more than a hundred. I believe there are some lands involved in town sites that might make a little additional acreage, and I am not sure that that has ever been corrected.

Q. When those corrections had been made and the lands marked, as you have stated, will you please state whether the Commission and you yourself, as acting chairman or chairman of the Commission, in your official action treated those lands as having been actually segregated under the provisions of the act of 1902?

(Question objected to as immaterial.)

A. Yes, sir.

Q. So far as your personal knowledge is concerned, what report of your action

which you have just described was made to the Commissioner of Indian Affairs and the Secretary of the Interior?—A. I do not recollect any report prior to the 20th of April, 1903.

Q. What, if any, direction or instruction was given to the Commission, of which you have any knowledge, in respect of the segregation of the Delaware lands and the methods according to which the segregation should be made by the Secretary of the Interior and the Commissioner of Indian Affairs?—A. I believe we made some sort of a report in the fall of 1902 that possibly related to what we intended to do. In reply to that report we received a letter, dated some time in November, from the Secretary of the Interior, approving the report, and that is all I can recollect about it. I have not refreshed my memory on the subject.

Q. After the passage of the act of July 1, 1902, state if you know of your personal knowledge of any directions or instructions sent to the Commission by the Commissioner of Indian Affairs or the Secretary of the Interior in respect of the manner or time or method of segregating the Delaware lands prior to the passage of the resolution of which you spoke.—A. I do not recollect any instructions unless they might be said to be contained in this letter that I referred to that we received from the Department in reply to our report upon a letter we received from Mr. Logan.

Q. And other than that you recall nothing in the way of direction or instruction?—A. I recall nothing.

Q. In your affidavit, referring to the report of April 20, 1903, you state, "that such corrected schedule was made without any intention of conforming to the laws relating to the establishment of town sites, and without due regard for the interests of the Delaware Indians or other Indians of the Cherokee Nation." Do you mean to say that the corrected schedule was made without any intention to observe existing laws?—A. I meant to say just how it appeared to me and other members of the Commission at that time.

Q. You knew of the existence of the laws relating to the establishment of town sites, and did you mean to say that those laws were intentionally disregarded?—A. They were disregarded.

Q. Why?—A. I do not know.

Q. And without due regard for the interests of the Delawares. What does that mean?—A. Do you want an explanation of just exactly what my views were? It was our belief at that time that certain Delawares who were entitled to have their lands placed within that segregation had not had their lands listed in this schedule. Of course we did not know that at the time we put the lands on the plats. That transpired subsequently to our action in December, 1902. It came to our knowledge that certain Delawares claimed that their lands were not placed within the segregated lands or placed on the schedule, and that appeared to us to be without due regard to their rights and claims. It also appeared to us that certain lands were placed on the lists that properly belonged to Cherokee citizens not Delawares.

Q. Were those supposed mistakes taken by the Commission as invalidating the entire segregation?—A. No, sir.

Q. Was there any difficulty in the way of making corrections in the segregation where what were considered mistakes had been made?—A. There would be a great deal of difficulty, of course, about it, because a great many Cherokee claim that their lands were taken in the Delaware segregation.

Q. How many?—A. About 300. I do not mean to say that their claims are all valid. I do not know, but they swore to them.

Q. Had those Cherokee made, to your knowledge, any definite claim in respect of those lands before the segregation?—A. Not that I know of. That is to say, they made no claim to us.

Q. Have you any personal knowledge, or has the Commission, to your personal knowledge, any knowledge as to the number of acres of land occupied or claimed to be occupied by these 300 Cherokee?—A. I have none. The records are in the Tahlequah land office, but I have not examined them.

Q. You have spoken of the Cherokee who claim lands that were segregated. What knowledge have you of the claims of Delawares that were not included or provided for in the segregated lands?—A. I have had letters from them and have talked with some.

Q. Approximately, how many?—A. I do not suppose I have seen personally or had letters from more than a dozen. I am informed that there are about 50.

Q. Is it not true that the great body of the 157,600 acres that were marked by you in the way you have described and were segregated, as we claim, in the way you have described, is it not true that the great body of that segregation is entirely untouched by any claim or dispute by opposing claimants?—A. I could not say, because I do not know how many acres these Cherokee claimants claim. You see, the allotment to the Cherokee citizens varies in acreage from 60 to 600 acres. These claimants may claim only the minimum allotment. They may claim the entire maximum allotment. I do not know.

Q. Is it true that up to the present moment the Commission has not ascertained or taken any steps to ascertain the number of controverted acres that are included in the segregation?—A. The number of controverted acres would appear in the claims made by the Cherokee, which are all in the Cherokee land office. I have made no effort to ascertain just how many acres or who is claiming them. I do not know what Mr. Breckinridge has done.

Q. You do not know of any existing lists of contestants or the amount of land they claim?—A. I do not know that any list of that kind is completed.

Q. Do you know the status or predicament in respect of their rights in the tribe of these Delawares who were not provided for by the segregation?—A. No, sir; I have not investigated that question.

Q. What, if any, action has been taken by the Commission, to your personal knowledge, in respect of those Delawares who were not included in the Delaware-Cherokee agreement and were admitted afterwards by an act of the council?—A. I do not know of any action that has been taken by the Commission. We have not made a roll of the Delawares.

Q. Is there now existing in the records of the Commission a list or schedule of Delawares entitled to be considered and provided for under the segregation as directed to be made by the act of 1902?—A. No, sir; no schedule has been made of the Delawares.

Q. Up to the present moment there is not existing in the Commission a schedule or list of Delawares entitled to the benefits of the act of 1902?—A. There is no schedule which would be such a schedule as we would submit to the Secretary of the Interior for his approval.

Q. He has never directed any such schedule to be made, and you have never reported such a schedule?—A. No, sir.

Q. To-day it is unknown who are and who are not entitled to the benefits of that act?—A. I do not say.

Q. I ask you whether that is not so?—A. My only reply is that we have not passed on the claims of the Delawares and have made no schedules of Delaware citizens.

Q. So far as the Commission is concerned, it is unascertained who are and who are not the Delawares entitled to the benefits of the act of 1902?—A. It is unascertained.

Q. When, that is, at what time after the passage of the act of July 1, 1902, did the Commission, to your personal knowledge, proceed to the allotment of lands to the Cherokee?—A. We opened the office the 1st of January and began allotments the 4th of January, 1903.

Q. Where was the office opened?—A. At Vinita.

Q. How was it opened?—A. Notices were printed, and I think several thousand circulated throughout the Cherokee Nation, posted in post-offices and stores, and printed in the newspapers stating that the office would open on January 1, to remain at Vinita until the 30th of April, and would reopen on the 4th of May, I think it was, at Tablequah, to remain indefinitely, for the purpose of allotting lands to members of the Cherokee tribe.

Q. Will you examine this paper and say if you recognize that it is a copy of the said notice?—A. This seems to be substantially the notice as I recollect it. The substantial facts are here stated.

(The above-mentioned notice is here given in evidence by the solicitor for the complainants, and the same is filed herewith, marked "Bixby Exhibit No. 1.")

Said notice is in the words and figures following, to wit:

#### BIXBY EXHIBIT No. 1.

#### COMMISSION TO THE FIVE CIVILIZED TRIBES, *Muscogee, Ind. T., September 25, 1902.*

Notice is hereby given that the Commission to the Five Civilized Tribes will on January 1, 1903, at Vinita, Ind. T., establish an office for the allotment of the lands of the Cherokee Nation to the citizens of that tribe in accordance with the provisions of the act of Congress approved July 1, 1902, entitled "An act to provide for the allotment of the lands of the Cherokee Nation, for the disposition of town sites therein, and for other purposes."

Such office will be maintained at Vinita until April 30, 1903.

Beginning May 4, 1903, the Commission to the Five Civilized Tribes will establish an office at Tablequah, Ind. T., for the allotment of the lands of the Cherokee Nation to the citizens of that tribe in accordance with the act of Congress above referred to, such office to be continued indefinitely.

TAMM BIXBY, *Acting Chairman,*  
T. B. NEDDES, *Commissioner,*  
C. R. BRECKINRIDGE, *Commissioner,*  
*Commission to the Five Civilized Tribes.*



Q. When was the office actually opened under that proclamation?—A. January 1, 1903.

Q. Were you there?—A. No, sir.

Q. Under whose direction was it?—A. I expect it was under mine.

Q. What was done generally under the proclamation?—A. The first two or three days after opening the office we distributed tickets to the crowd of people in attendance, giving them the right of admission to the land office, and on the 4th of January we began to allot the lands. People were permitted to enter the office and approach the citizenship or roll clerk and get a certificate; upon presentation of that certificate they were permitted to select allotments for themselves, members of their families, or others whom they might lawfully represent.

Q. Will you describe a little more minutely the process—how the office was constituted, what the departments were, and how the applicants came.—A. The office was constituted by the selection of the chief clerk, who had charge of the entire business; under him was the roll clerk, who had charge of the rolls, and the allotment clerk, who had charge of the allotment office. I think there were in all about 35 employees in that office. The method of selecting allotments is rather difficult to describe, but the applicant proceeds about as follows: After getting his certificate from the roll clerk he is shown into the allotment office proper. In the Cherokee office there are about 7 allotment clerks. The applicant is given a seat in front of one of the clerks at a desk and is asked a few preliminary questions to locate him in a general way; then the clerk goes to the records, and if the land asked for has been surveyed by the Commission the clerk produces what we call a sectional diagram, which shows the improvements, the cultivated fields, fences, houses, sheds, and barns on that section and attempts to show who claims it. Sometimes the information as to that is not very reliable, because the surveyors would only find on the land, in some cases, tenants or renters, and occasionally these renters were somewhat misty as to who they really rented from and the information would not be entirely accurate, but the sectional diagram does show just what lands are under cultivation, etc. From that diagram or map, in connection with the statements that the applicant makes, the clerk attempts to give him such lands as he desires, covering the improvements, if any, and the extent of the improvements, and giving him an allotment that will come within the average sum of the total allotment to which each Cherokee is entitled, which is about \$325 in round numbers, the lands having been appraised at arbitrary figures reaching from 50 cents to \$6.50 an acre. This gives a Cherokee from 60 to 650 acres of land, according to its value. Then a blank is filled out, which requires answers to numerous questions as to the character of the land and improvements and the possession of the land and improvements, and the applicant is required to sign that under oath. Of course the work is quite technical and requires considerable time in each case, because of the fact that the Commission can not take more than the average value of 110 acres and the applicants improvements must be protected and also because the applicant is permitted to select such lands as he desires, not necessarily in contiguous tracts. It may be much broken up, and consequently the allotment work is quite intricate and consumes considerable time in each case.

Q. When the allotment is made what evidence does the applicant have of his right?—A. He gets none whatever at the time. In the course of time he gets a certificate which describes the land by government subdivisions and also illustrates it on the diagram on one end of the certificate. It is illustrated on the diagram so that the man may have some idea of how his land looks as well as having the Government description, this frequently being very lengthy and somewhat involved. Frequently rivers are drawn on these diagrams and lines of railroads.

Q. Who signs the certificates?—A. I do, as chairman of the Commission.

Q. It is dated and has your signature; has it any seal?—A. No, sir.

Q. Have you a copy of one of these certificates?—A. No, sir.

Q. In substance what are they?—A. In the first place is the caption: "Department of the Interior, Commission to the Five Civilized Tribes, Vinita or Tahlequah. Date of selection. This is to certify that John Doe has selected for allotment the following described lands," giving the description of the lands and then stating that the certificate is not transferable. Signed: "The Commission to the Five Civilized Tribes, Tams Bixby, chairman." On the other side is the diagram of which I spoke.

Q. That is delivered to him when?—A. We were delivering certificates for lands selected in May at the time we were instructed to close the office. I would say that in all probability all the certificates would have been out by this time if we had not been stopped.

Q. Up to the time of the removal of the office to Tahlequah, about how many applications have been filed by Cherokee?—A. I expect about 4,000.

Q. After the removal of the office to Tahlequah, how many were filed?—A. I think that we were receiving about 1,250 a month.

Q. Up to the present time, approximately, how many applications have been filed in all?—A. I should think about 8,000.

Q. The certificates to the applicants are prepared by the Commission, or under their direction, in the land office in the Territory, are they not?—A. Yes, sir.

Q. What disposition is made of them?—A. They are mailed to the applicant.

Q. Do you require a receipt?—A. No, sir.

Q. The certificates themselves remain in the possession of the Commission until they are delivered or sent to the applicant?—A. Yes, sir.

Q. They are not approved by the Secretary of the Interior and the Commissioner of Indian Affairs by any formal act or indorsement on any paper or on the certificate itself?—A. No, sir.

Q. How many certificates, approximately, have been issued to Cherokee under this act of 1902?—A. I think in the neighborhood of 5,000.

Q. Covering how much land?—A. I could not say.

Q. Of course a record was kept in the Commission of certificates issued?—A. Yes, sir.

Q. In what form?—A. In two ways. There is an elaborate stub to each certificate, which is filled out so as to correspond exactly to the body of the certificate with the exception that the diagram is not made on the stub, and there is also a record kept in a book, which is a record of certificates issued, and in that record book is also shown when the certificates are made and the post-office address of the party to whom they are made. Of course the certificate of an adult, the head of a family, goes to him direct, and the certificates for the lands of his minor children and his wife are also mailed to him. This record book shows how the certificates are mailed.

Q. The law provides for the issue of these certificates?—A. Yes, sir.

Q. What further is required after the issue of the certificates to complete the title of the person to whom the certificate is issued, according to the practice of the Commission?—A. No deeds have yet been issued to Cherokee allottees, but the Commission, under direction of the Secretary of the Interior, will prepare deeds for the allottees, to be submitted to the principal chief of the nation for his signature, and the deeds will, after having been approved by the Secretary, thereafter be delivered to the allottees, and the deeds will be recorded in the office of the Commission.

Q. The certificates to which you have referred are then all outstanding and no action has been taken on them?—A. Yes, sir.

Q. They are now in the hands of the persons to whom they are issued? A. So far as we know.

Q. When and in what event is further action to be taken by the Commission in respect of those certificates?—A. Those certificates which are already issued. No further action is necessary by the Commission in relation to them.

Q. When and in what way are the patents prepared to be issued?—A. I could only tell you, perhaps, how it is done in the Creek Nation.

Q. In respect to those certificates which are already issued?—A. There is no further proceeding contemplated, so far as the Commission is concerned.

Q. How does the person to whom a certificate is issued get his patent?—A. If the practice is to be the same as in the Creek Nation, he will go to the principal chief, if the chief requires it. The deeds will be made out by us without reference to the certificate.

Q. They will go from you where?—A. They go from us to the principal chief to be executed by him and returned to us; then by the Commission forwarded to the Secretary of the Interior for his approval; by the Secretary of the Interior returned to the Commission, and by the Commission sent to the principal chief for delivery. That is the method pursued in the Creek Nation.

Q. In respect of the Cherokee, nothing of that sort has yet been done?—A. No, sir; we are preparing now to get the blank deeds printed and have the record books made, but that is as far as we have gotten. No deeds will be issued in any case until after the expiration of nine months from the date of the selection of the land.

Q. That time being fixed by the law?—A. That time being fixed by the law when it is supposed that the land becomes noncontestible. That is the limit of the contest period.

Q. The proceedings of the Commission in respect of the issue of certificates were made, as I understand the matter, of record. Will you please state when and in what manner the proceedings of the Commission in respect of the issue of the certificates were reported to the Commissioner of Indian Affairs and to the Secretary of the Interior?—A. I could not recollect whether it was ever reported to the Commissioner and the Secretary.

Q. Did the Commission make monthly reports of their doings to the Secretary of the Interior and the Commissioner of Indian Affairs?—A. Yes, sir.

Q. That has been their habit?—A. Yes; for the past two years, or thereabouts.

Q. Would those reports include what they had done in respect of the issue of certificates?—A. I expect so. We intend to cover all material transactions, although, of course, it is quite possible that things which may be very material would not be reported. Some things that we have perhaps been in the habit of doing might possibly be omitted, things that were the practice of the office before we began these reports. The idea of these monthly reports is simply to give the Department an idea of the general transactions of the Commission.

Q. What, in the course of business, was the action taken on these reports. Did they, or any reply, come back to the Commission in respect to them?—A. Generally, as I recollect, we would get a reply from the Secretary of the Interior or Acting Secretary, and sometimes the reply would say that the report was approved; sometimes it would simply say that the report had been received and considered.

Q. The land office for the Cherokee was opened at what time?—A. January 1, 1903.

Q. At the time of the opening of the land office and the issue of the proclamation to which you have referred, did you and the Commission know of the pendency and condition of the suit which is described in section 23 of the act of 1902?—A. Yes, sir.

Q. Did they and you know that that suit had not been determined?—A. I knew, in a general way, that it had not been determined.

Q. When were the Commission ready to begin the allotments to the Cherokee?—A. About the time we issued this proclamation we were practically ready. At any rate we were ready by the time the land office opened.

Q. Did the Commission, when the land office was opened, proceed to make allotments based upon the fact, or the suggested fact, that the segregation of the Delaware lands had been made?—A. Yes, sir.

Q. Up to the time of the opening of the land office had there come from the Secretary of the Interior or the Commissioner of Indian Affairs any information, assertion, or objection, implying or indicating that the segregation of the Delaware lands had not been then perfected?—A. Not that I know of.

Q. In acting as a member of the Commission, was your action and that of the Commission, so far as you know, based upon the existence, or supposed existence, of power and authority in you to make the segregation.—A. Answering for myself, I can say yes, and in answering for the others, I suppose so.

Q. When did you first know and when did the Commission first know, so far as is within your personal knowledge, that it was claimed or asserted by the Secretary of the Interior that the Commission had no authority or right to make the segregation except with the approval of the Secretary?—A. So far as my own knowledge is concerned, I will say that the first information I had to that effect was when I learned of the decision of Judge Anderson, rendered in this case.

Q. Will you state, if you know of your own personal knowledge, whether the Secretary of the Interior and the Commissioner of Indian Affairs were kept advised of the proceedings of the Commission in the allotment of lands in January, February, March, and April, 1903, and you may, if you please, refresh your recollection by referring to what purports to be a press copy of certain telegrams and letters mentioned and referred to in the letter of the Acting Secretary to the Commissioner of Indian Affairs, dated April 29, 1903, now shown.

(Object to this because it is not the best class of evidence. Certified copies should be submitted.)

A. I recollect the receipt of the telegrams and the reply sent by me, and I think this is substantially correct at least.

(The above-mentioned letter is here given in evidence by the solicitor for the complainants, and the same is filed herewith, marked "Bixby Exhibit No. 2.")

Said letter is in the words and figures following, to wit:

BIXBY EXHIBIT No. 2.

DEPARTMENT OF THE INTERIOR,  
*Washington, April 29, 1903.*

THE COMMISSIONER OF INDIAN AFFAIRS.

SIR: You are advised that on the 27th instant I wired the Hon. Tams Bixby as follows: "Suggest Commission, if practicable, delay removal of land office from Vinita until arrival of secretary at Muskogee, approximately May 7. He wishes to confer with you in regard to it."

To which Mr. Bixby replied, same date: "Telegram of this date received. All arrangements made to keep Tahlequah appointment May 1, information of which is widely disseminated. Extremely important to keep this appointment in full-blood region and to press the work at this time among them. Much better to return

to western part of the nation at a later date if necessity therefor shall appear as work progresses. Any interruption now would greatly embarrass the Commission, and the Government worse."

On the 26th instant I wired Chairman Bixby as follows: "Referring to your telegram of yesterday, Department will not interfere in Tablequah appointment."

Concerning the foregoing, Commissioner Breckenridge wired me on the 27th instant: "I strongly concur in telegram of Chairman Bixby of this date as to importance of keeping promptly the Tablequah appointment; perfectly easy to return to western part of nation at later date if we find it desirable to do so, as we likely shall.

Respectfully,

THOS. RYAN, *Acting Secretary.*

I recollect that we sent the Department monthly reports during those months, and I presume that the transactions of the Cherokee land office were mentioned in those reports. I have not any doubt that they were. I could not recollect what those reports contained. Of course the reports themselves would be the best evidence.

Q. After the action which you have described was taken by the Commission for the segregation of the Delaware lands, when was there any further action by the Commission or any of the Commissioners in respect of any of the lands so segregated and which you refer to as having been set apart?—A. No action has been taken, that I recollect, except the corrections mentioned in the examination already.

(The further taking of this deposition was thereupon adjourned until Saturday, October 24, at 9.30 o'clock a. m., at the same place.)

WASHINGTON, D. C., *October 24, 1903—9.30 o'clock a. m.*

Met pursuant to adjournment.

Present: Nathaniel Wilson, esq., solicitor for the complainants, and Richard C. Adams, esq., one of the complainants; W. C. Pollock, esq., solicitor for the defendants. Whereupon the direct examination of Tams Bixby is continued.

By Mr. WILSON:

Q. After the corrections to which you have referred were made, and which were, I believe, completed in January, 1903, what, if any, action was taken by the Commission in respect of those lands, or any of them, by the receiving and filing of applications, and when was that action first taken?—A. In reply to the first part of your question, I can say that none whatever has been taken in respect of those lands since the corrections made in January. In reply to the latter part of your question, it might be said that applications have been received made by Cherokees other than Delawares for some of these lands, which applications have been placed in separate files in the office at Tablequah.

Q. How many such applications have been received, approximately?—A. I think about 300.

Q. How were they presented; to whom and by what authority were they put on file among the papers of the Commission?—A. They were presented by the applicants themselves in the form of sworn testimony. They were received by the allotting clerks in the Tablequah land office, and the clerks received them by authority of the Commission.

Q. Do you mean that the Commission directed them to be received by the clerks?—A. Yes, sir.

Q. What noting on the records of the Commission was made of these applications?—A. No notice whatever in the sense that other applications are put upon the records. The ordinary application, after having been received, is put in the regular files and the description of the land put upon the books opposite the name of the allottee, and as soon thereafter as the work of the office will permit certificate is issued. In the case of these applications for Delaware lands, the application is simply received and put in files called the "hold-up" files, and the description of the land placed on separate cards, if at all, and kept by themselves.

Q. Did those applications, which I understand are under oath, state in any detail the nature of the claim of the applicant, and whether he had improvements on the land?—A. Yes, sir.

Q. Did the Commission, or any members of the Commission give any directions as to what the application should or should not contain, and what would be required of the applicant?—A. Not in detail. They directed the chief clerk in a general way to accept and place in the "hold-up" files the application of any Cherokee citizen who claimed that lands that belonged to him were taken in the Delaware segregation.

Q. Did those applications include cases of lands claimed by the Cherokees independently of any allegation by them or claim by them as to actual occupation?—A. No, sir; I think not, so far as I know.

Q. What, if any, investigation into the facts set forth in these applications have been made by the Commission?—A. Do you mean by that as to whether the Commission has, either by itself or through any of its employees, actually gone onto the ground and ascertained whether the applicant has told the truth or not? So far as I know, the Commission has not made any exhaustive examination of the facts set forth in these applications. Answering for myself, I had reason to believe, perhaps, that it was quite possible that these statements might be true, because they were made under oath and were as much entitled to be believed as any of the applications made in the Cherokee land office upon which allotments of land are made.

Q. So far as you know, when, in what way, and by whose application was the question first raised before the Commission as to the filing of any application with the Commission in respect of these segregated lands?—A. I have no recollection of who made the first application, and I do not think that I know the name of any Cherokee who did make an application. Of course I have known of certain instances, but have no recollection at this time of the names of any applicants.

Q. Do you remember approximately when and by whom the first application was made?—A. No, sir. I do not remember by whom it was made, but I recollect that some one made an application not long after the land office was opened.

Q. Will you examine Exhibit No. 6 of the original bill in this case and state if you identify your signature thereto?—A. That looks very much like my signature.

Q. Have you any doubt whether you signed that letter?—A. I would not want to say whether I signed it or not.

Q. Who could have signed it if you did not? Did anybody have authority to sign your name?—A. No, sir.

(Original letter, which is attached to the bill as Exhibit No. 6, is offered in evidence.)

A. (Continued.) I want to say, in further explanation of my answer, that my signature, as appears on that letter, was undoubtedly signed by my authorization, but was signed with a rubber stamp.

Q. Referring to this letter and to the application therein mentioned of Charles Parks, state if Parks was a Cherokee.—A. It is not stated that he was a Cherokee, but I presume that he was. He might be a Cherokee freedman.

Q. State, if you know, whether this applicant was represented by Mr. Norwood.—A. No, sir; I could not state.

Q. State, if you know, whether Mr. Norwood represented many of these applicants.—A. I have no information with regard to the matter. I do not know who Mr. Norwood is or whether he represented any of these people or not.

Q. The notice herein given to the person to whom it is addressed, as to appearance at the Cherokee land office at any time within nine months, was by the authority and direction of the Commission, was it not?—A. I do not recollect that the Commission ever passed any formal resolution, as a Commission, directing that anything of that kind be done.

Q. It was done with their knowledge and approval, however, was it not? It was not the individual act of the acting chairman?—A. No, sir; it was not the individual act. Of course the Commissioner in charge does and performs a great many acts on behalf of the Commission, but without formal direction in the particular instance.

Q. Your notification contemplated and intended to obtain an application to the Commission by the person to whom it was addressed?—A. The purpose of that notice is to advise the Delaware that some one had made application for the lands which he claimed to be living on or which he did live on.

Q. Only in cases of applications such as you have mentioned were similar notices issued?—A. I could not say whether they were sent in all cases or not. There might have been other notices of a different nature sent, simply notifying the Delaware that a certain party had applied for the land he claimed or upon which he lived. The purpose was simply to give him notice. I might say that we were perhaps rather groping in the dark as to just what would be necessary to be done finally in these matters, and in accepting applications from Cherokee simply allowed them to practically make a declaration of their claims; and in endeavoring to advise the Delawares, on the other hand, some of the notices which were used in the ordinary run of business were sent to Delawares. In some instances no notices may have been sent, and in some instances notices of a different character, but the whole purpose was to advise the Delaware that some one claimed the land which he claimed.

Q. These particular notices contemplated a contest, did they not?—A. It so states; but I will say that, if the decision of the court was not rendered before the expiration of the nine months, I have no possible idea that the Commission would have attempted to allot this land to the Cherokee making the application. In other words, we had intended to set these lands aside awaiting the final decision of the court, and

only received the applications of Cherokee for these lands for the purpose of ascertaining, in any way that might come within our notice, the rights of the different parties, in case it was made our duty finally to determine said rights.

Q. In reply to notices, what personal knowledge have you of applications made by the Delawares?—A. I have none.

Q. Were there any filed, so far as you know?—A. I know nothing about it.

Q. If there had been applications filed in obedience to those notices, you would not know it?—A. I might and might not. Since the 1st of May Mr. Breckinridge has been in charge of the Cherokee office. When he is away I am in charge of it. Nothing of that kind has been brought to my attention.

Q. Have you any personal knowledge or any official knowledge of what was actually done in respect of going upon any of these lands, for which the Cherokee applied, by the Cherokee or any persons acting for them, after the applications were received?—A. None whatever, either personal or official.

Q. Had you any personal knowledge or, so far as you know, had the Commission any information as to the Cherokee, or any of them, going upon the segregated Delaware lands after the segregation?—A. I have no personal knowledge and do not know anything about what the other Commissioners might know about it.

Q. When were the last applications filed by the Cherokee, so far as you know, on the segregated lands?—A. I could not say.

Q. When was the last filed to your knowledge?—A. I have not any definite knowledge on the subject.

Q. Was the filing stopped at any time after it begun?—A. Yes, sir.

Q. When?—A. It was stopped when the office shut up in June and it was stopped about the middle of July.

Q. It was stopped and applications not allowed in June?—A. The whole office was closed in June.

Q. When was the filing of applications resumed?—A. I think when the office opened. I have not taken any pains to find when these applications were made, when begun, or when stopped, except when we were directed to stop them, which I think was in July.

Q. You know, as a matter of fact, that they were stopped?—A. Yes, sir.

Q. When were they resumed?—A. Why, we resumed them for a few days, I presume; at any rate the office was directed to accept them, after we were notified of denial of the application for a restraining order, and then, I believe, soon after that we got notice from the Secretary again to stop business, and then filing was stopped.

Q. Do you remember a public notice issued upon receiving information of the refusal of the court to grant the restraining order, and will you examine a paper I show you and see if it is a copy of the notice issued by the direction of the Commission?—A. I have no recollection of the Commission authorizing the giving of any such public notice. I do recollect that a resolution substantially similar to the one here was adopted by the Commission. The giving of this public notice was an act, if my recollection serves me right, of Commissioner Breckinridge.

(The above-mentioned notice is here given in evidence by the solicitor for the complainants, and the same is filed herewith, marked "Bixby Exhibit, No. 3.")

Said notice is in the words and figures following, to wit:

### BIXBY EXHIBIT, No. 3.

#### PUBLIC NOTICE.

This office having official information of the refusal by the supreme court, District of Columbia, of the injunction asked for relating to the application for allotment by certain Cherokee citizens of lands embraced in the Delaware segregation and of the discharge of the temporary restraining order concerning the same, the following order of the Commission to the Five Civilized Tribes is again put into operation, viz:

"That Cherokee citizens not of Delaware blood, occupying lands embraced in the Delaware segregation, shall be permitted to make application for such lands, and any claimants may institute contest proceedings for the same, provided that all such applications and contests shall be held suspended pending the determination of the rights of claimants to such lands as provided in the Cherokee agreement approved July 1, 1902.

"C. R. BRECKINRIDGE,

"Commissioner in Charge Cherokee Land Office."

Q. As a matter of fact such notice was given?—A. I have no knowledge of such a notice.

Q. You have a knowledge of the resolution?—A. Yes, sir.

Q. Did you see any publication of it?—A. No, sir.

Q. After that notice, when was the filing of applications suspended, approximately?—A. After that resolution, you mean. It was suspended when we got the direction from the Secretary of the Interior.

Q. When was that, approximately?—A. Some time this month.

Q. Between the date of that resolution and the order directing the Commission to receive no more applications, how many applications were filed by the Cherokee?—A. I do not know that any were received.

Q. Have you any definite information as to the number of Cherokee applications now on file?—A. What sort of Cherokee applications?

Q. Cherokee applications for Delaware lands.—A. About 300 up to the present time.

Q. Are applications from Cherokee for Cherokee lands outside of the 157,600 acres still being received?—A. No, sir.

Q. When were they stopped?—A. Upon the receipt of the telegram from the Secretary, just referred to.

Q. How many of those had been filed up to that time?—A. About 10,000 or 12,000.

Q. Upon those applications certificates have been issued?—A. No, sir; not upon all of them. I think, as I stated yesterday, that about 5,000 or 6,000 certificates have been issued up to the present time.

Q. Those certificates have all been issued based upon the fact, or the supposed fact, of the previous segregation of the Delaware lands?—A. Yes, sir.

Q. If any of the Cherokee applications for Delaware lands which the Commission has allowed to be filed should hereafter be decided in favor of the Cherokee applicant, where would the Delaware whose land was so taken go, and out of what lands could he obtain the number of acres to which he would be entitled?

(Object to this question because it presupposes that the land belongs to the Delaware, whereas the fact is on a wrong premise.)

A. The law of July 1, 1902, in its general application, seems to protect the rights of Cherokee as well as Delawares, and Cherokee, in our judgment, are thought to have the right to the lands upon which they live, as well as may be said that Delawares have the right to the lands which they claim, and if it is found that lands belonging to Cherokee are within the Delaware segregation, and there should be an opportunity to determine the right of that proposition, I presume the Delaware would be obliged to look for lands upon the public domain, if he had no lands to which he was entitled by occupancy. Of course, it is not within the knowledge of the Commission as to whether these applications of Cherokee would ever be any use to the Commission. The question as to the final disposition of the 157,800 acres, it appears to me, depends in a great measure upon the determination of the Supreme Court in that case.

Q. If the Delawares lose any portion of the 157,600 acres, they, under the law, are entitled to have that made up in some way, are they not?—A. I should think they were, if the court said so. I presume that is a legal question.

Q. Where and out of what lands could they obtain an equivalent of lands which were disallowed?—A. There is sufficient land in the Cherokee Nation to give each Cherokee the value of 110 acres of average land, and also to provide 157,600 acres for the Delawares.

Q. But the limits and acreage of selection, or for selection, have been lessened, have they not, by the certificates that have already been issued to the Cherokee?—A. Undoubtedly, to that extent; but that does not change the proposition that there is sufficient land for the Cherokee tribe and for the Delawares, including this 157,600 acres.

Q. Did not the Commission, in the administration of the law, act upon the supposition, or the supposed fact, that there should be no certifications to the Cherokee until there had been an absolute and complete segregation to the Delawares?—A. I should think that our action in the premises was a complete answer to that question.

Q. What is the action and what your understanding of the question?—A. The Commission, as I explained yesterday, passed a resolution authorizing the acting chairman to set aside this 157,600 acres for the Delawares, which the acting chairman did, and which is still preserved intact.

Q. What, if any, action has been taken by the Commission up to the present time based upon the incompleteness and want of finality of this segregation of the Delaware lands?—A. The Commission has taken no action other than what I have stated.

Q. Do you know anything of the quality of the 157,600 acres so segregated by the Commission?—A. I only know that the lands generally are in the best part of the Cherokee Nation. I know nothing of the particular tracts.

Q. Do you know generally in regard to the extent and character of the improvements thereon?—A. I have no personal knowledge as to particular cases. I know that that section of the nation is well improved.

Q. How would the present value of these lands compare with the value of lands that would still be open to the Delawares in case they were obliged to go elsewhere for the 157,600 acres of land to which they are entitled?—A. If the value was based exclusively upon an agricultural basis, I believe that the lands which they have selected would be of greater value, but it is an open question in the minds of a great many people whether or not the lands in the rougher section of the Cherokee Nation are not as valuable or more valuable than the high grade agricultural lands.

Q. For what reason?—A. Because of the possibility of minerals.

Q. Simply a speculative value?—A. It might be real as well.

Q. Are those lands that would still be available for the Delawares, if they had to seek elsewhere, appraised by the Commission?—A. Yes, sir.

Q. At what rate?—A. The appraisement varies from 50 cents to \$6.50, and these lands, which appear on the surveys to be of small agricultural value, are appraised at the lowest figures, but the law expressly eliminates the mineral feature, and the lands may have been, even in our judgment, of higher value from a mineral standpoint and yet been appraised at a low rate.

Q. Taking out and excluding the lands covered by the certificates already issued to the Cherokee, can you state the average appraised value of the remaining lands in the Cherokee Nation?—A. No, sir; nobody could without a great deal of computation.

Q. Could you state what would be the value of the remaining agricultural lands?—A. No, sir.

Q. What has the Commission appraised?—A. Appraised all the lands for the purpose of distribution equally among the members of the tribe upon a value basis.

Q. What is the difference in the administration of the law by the Commission in respect of the acres that the Cherokee gets and the acres that the Delaware gets?—A. We were not administering at all upon the acres that the Delaware gets. We were not allotting any lands to Delawares.

Q. You have not done anything more than set apart these 157,600 acres?—A. No, sir.

Q. Those are not average acres?—No, sir; they were set aside without regard to their appraised value, as agreed upon by both parties.

Q. So that up to the present time the Commission has not set apart to any Delaware any number of acres of land anywhere in the Indian Territory?—A. Not as a Delaware claiming lands within these 157,600 acres. We may have allowed a Delaware to select tentatively his \$325 value outside of the segregation.

Q. Has that been done?—A. I do not know, but the Commission passed a resolution to that effect. I do not know that any Delaware has applied to have any lands set aside to him in that way, but it may have been done. It would be outside of the segregation or the supposed segregation.

Q. If there has been no segregation made and completed of the Delaware lands, what is the present predicament of the certificates and the lands covered by certificates already issued to the Cherokee?

(Objected to as a question of law.)

A. That would be a question that would not be for me to answer.

Q. Do you know, as a matter of fact, whether Cherokee have actually gone upon or are in possession of the lands for which they got certificates?—A. I have no knowledge whatever of a single instance of that kind.

Cross-examination by Mr. Pollock:

Q. You state that applications by Cherokee other than Delawares for lands embraced in the so-called segregation were received and placed in a special file. Was the Cherokee applicant advised as to what rights he obtained by filing such application?—A. Yes, sir.

Q. What was he given to understand he obtained by that?—A. He was given to understand that he obtained nothing, unless, perhaps, it might be considered that he had filed a declaration of his rights, and he was required to sign a stipulation that he understood that this was not an allotment filing.

Q. In answer to a question in direct examination you stated that up to the time the Cherokee land office was opened, January 1, 1903, you had no knowledge of any objection or criticism on the part of the Secretary of the Interior of your action in making the purported segregation. Had the Secretary received any official report from you of your action at that time?—A. No, sir.

Q. Was there, then, any chance for him to have made any objection, or given any instructions, at that time in regard to it?—A. None based on any report we had made.

Q. No knowledge from you?—A. We had sent him no report as to what we had done.

Q. The resolution was passed December 16?—A. The 16th or 17th.



Q. And your action as acting chairman under that was a few days later?—A. Within two or three days.

Q. And then within ten or twelve days the land office was opened?—A. Yes, sir.

Q. Yesterday you were asked if the Commission had taken any action toward making the segregation of the Delaware lands under the act of June 28, 1898, and you answered that it had not. State what condition the work necessary to be done before any allotments could be made was in up to that time and up to July 1, 1902.—A. We were not ready to begin the allotment of lands under the Curtis Act. We were engaged in hearing applications for citizenship and in preparing the rolls and in determination of citizenship cases, in surveying the lands and ascertaining the location of improvements, and in getting ready for the work of making allotments in the Cherokee Nation. We had under consideration at divers times the claims of the Delawares and had some communications from their representative, but were not in position to begin the allotment of the lands of the Cherokee Nation, and did not get in position to do that until after the passage of the act of July 1, 1902.

Q. Is it not true that prior to July 1, 1902, only the possessory right to the surface of the Cherokee Nation could be allotted to the members of that nation?—A. Yes, sir.

Q. Is it not true that prior to that time, or for a period of several years, negotiations had been held with the nation to secure the distribution of these lands?—A. Yes, sir. We had repeatedly entered into negotiations with the Cherokee, some of these negotiations failing to be ratified by the Cherokee and some by Congress.

Q. The fact that these negotiations were pending had a tendency to retard the work of the Commission in the Cherokee Nation?—A. Yes, sir.

By Mr. WILSON:

Q. What, if any, difficulty or obstacle existed immediately after the passage of the act of June 28, 1898, in the way or to prevent the segregation of the lands to the Delawares?—A. The difficulties that I have just stated made it at least unnecessary to segregate the lands at all until we were ready to begin allotment of some kind.

Q. Would it have been just as easy to have proceeded with the segregation of the lands so far as the Delawares were concerned, immediately after the passage of the act of June 28, 1898, as it was when the segregation was made?—A. So far as the Delawares were concerned, yes, but not so far as the Commission was concerned, because we had none of our work, such as the preparation of plats, books of various sorts, stationery, and things of that kind ready for use.

Q. At the time of the passage of the act of 1898, the land was sectionized by the Commission, was it not?—A. Yes, sir.

Q. So far as the Delaware segregation was concerned it was postponed then until the Commission got ready to proceed with the allotment to the Cherokees?—A. No; it was postponed until the Commission was ready to take up the Cherokee proposition as a whole, including the Delaware.

Q. Will you state, as accurately as you can, what kind of a paper the Cherokees were required to make or file with their application for any of the Delaware segregated lands?—A. In the first place, they made of their own volition a statement, under oath, of what their claims were, and then the Commission required that they sign a stipulation, agreement, or whatever it may be called, in which they stated, under their own signature, that they understood that this application gave them no rights to the land as an allotment, and that it was not a formal allotment to them.

Q. That was put on file with the application?—A. Yes, sir; in every case.

Q. And that requirement was prescribed by the Commission?—A. Yes, sir.

Q. By any formal order?—A. I do not recollect.

Q. Was any information or notice given to the Delawares of that requirement by the Commission?—A. I have no recollection of any.

Q. Were they informed of the qualification that accompanied each application?—A. I have no recollection of any, but they could easily have ascertained that by a visit to the land office or by calling on the Commission.

Q. Have you any personal knowledge of any application for information in respect of the details and particulars of the applications made by the Cherokees?—A. I have no definite recollection. I have had some letters from Mr. Adams, which I have always endeavored to answer in detail and courteously, as soon as the matter could be reached. Mr. Adams sometimes asked for information that required considerable work to procure and perhaps might have been delayed, but we have never had any disposition not to furnish him with all information as to our proceedings.

Q. Do you mean to have it understood, Mr. Bixby, that the Commission, so far as you know, never made in any form any report to the Secretary of the Interior in which it appeared and was shown what action had been taken by the Commission in respect of the segregation of the Delaware lands?—A. I mean to say that so far as I

recollect the Commission never made any report for the identical purpose of reporting upon the particular action of the Commission in making a segregation or setting aside those lands. It is possible that we reported in our monthly reports what we were doing in a general way, but as to making a report of that identical procedure I have no recollection of such a report.

Q. Would you say, or wish to be understood as justifying, that the Secretary of the Interior was not officially informed and did not officially know from the official communications of the Commission that the Commission had made the segregation of the Delaware lands?—A. I think I have answered that question as fully as I can in my previous answer just made.

## EXHIBIT 64.

*List of names of persons who have applied for land in the Cherokee Nation, which is included within the Delaware segregation.*

[In all cases the applicant has claimed that he is occupying the land applied for, or has valuable improvements upon the same.]

| Name and post-office.                                 | Description and date.   |
|---|---|
| Milton K. Thompson, Muscogee, Ind. T.                 | Allotment SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ N. $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ N. $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of 22-22-22. Jan. 5, 1903.  |
| Robert D. Blackstone, Muscogee, Ind. T.               | SW $\frac{1}{4}$ W. $\frac{1}{4}$ SE $\frac{1}{4}$ of 22-22-22. Jan. 5, 1903.   |
| Sterling Colston, Vinita, Ind. T.                     | E. $\frac{1}{2}$ of 21-22-22; SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of 22-22-22. Jan. 5, 1903.   |
| Jane Byrd, Chelsea, Ind. T.                           | E. $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of 32-21-17; E. $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of 32-24-17; W. $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of 32-24-17. Jan. 5, 1903.   |
| Goldie J. Waller, Chelsea, Ind. T.                    | S. $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of 21-24-17. Jan. 6, 1903.  |
| William T. H. Waller, Chelsea, Ind. T.                | S. $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of 20-24-17. Jan. 6, 1903.  |
| George W. Waller, Chelsea, Ind. T.                    | SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of 20-24-17. Jan. 6, 1903.   |
| Andrew C. Atkins, Bartlesville, Ind. T.               | SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ W. $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of 25-26-12. Jan. 6, 1903.   |
| Benjamin F. Bryant, Siloam Springs, Ark.              | E. $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of 20-23-19. Jan. 8, 1903.   |
| Leona Bryant, Siloam Springs, Ark.                    | W. $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of 20-23-19. Jan. 8, 1903.   |
| Isaac H. Jordan, Collinsville, Ind. T.                | SW $\frac{1}{4}$ of 18-25-13. Jan. 9, 1903.   |
| Pleasant N. Blackstone, Muscogee, Ind. T.             | NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of 22-22-22. Jan. 10, 1903.   |
| Robert T. Morrison, jr., Okelata, Ind. T.             | W. $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ E. $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of 17-25-13. SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of 18-25-13. Jan. 12, 1903.   |
| Ellen C. Morrison, Okelata, Ind. T.                   | SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ W. $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of 16-25-13. Jan. 12, 1903.  |
| Claud A. Morrison, Okelata, Ind. T.                   | NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of 18-25-13. Jan. 12, 1903.  |
| Tessie Bradford, Coffeyville, Kans.                   | SW $\frac{1}{4}$ NE $\frac{1}{4}$ less 3.08 acres M., K. and O. R. R. right of way; NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ E. $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ less 1.51 acres M., K. and O. R. R. right of way; SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of 20-29-15. Jan. 13, 1903. |
| Jennetta Bradford, Coffeyville, Kans.                 | NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ E. $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of 20-29-15. Jan. 13, 1903.   |
| Malissa Bradford, Coffeyville, Kans.                  | NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ E. $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of 20-29-15. Jan. 13, 1903.  |
| Deatrus Bradford, Coffeyville, Kans.                  | NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of 20-29-15. W. $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of 20-29-15. Jan. 13, 1903.  |
| Harold D. Lammom, Bartlesville, Ind. T.               | SW $\frac{1}{4}$ NW $\frac{1}{4}$ of 13-26-12. Jan. 14, 1903.   |
| Ruth E. Rogers, Chelsea, Ind. T.                      | NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ S. $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of 9-26-15. Jan. 14, 1903.   |
| Maudie E. Rogers, Chelsea, Ind. T.                    | NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ S. $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of 9-26-15. Jan. 14, 1903.   |
| Scenie Brewer, care of Nan Porter, Muscogee, Ind. T.  | SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ N. $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of 20-29-15. Jan. 13, 1903.  |
| Do.....   | SE $\frac{1}{4}$ NE $\frac{1}{4}$ less 3.08 acres M., K. and O. R. R. right of way, of 20-29-15. Jan. 13, 1903.   |
| Douglas Porter, care of Nan Porter, Muscogee, Ind. T. | SW $\frac{1}{4}$ NE $\frac{1}{4}$ less 3.08 acres M., K. and O. R. R. right of way, of 20-29-15. Jan. 13, 1903.   |
| Willie Porter, care of Nan Porter, Muscogee, Ind. T.  | NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ S. $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of 20-29-15. Jan. 13, 1903.  |
| Edna Porter, care of Nan Porter, Muscogee, Ind. T.    | NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ E. $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of 20-29-15. Jan. 13, 1903.  |
| Jennie E. Williams, Miles, Ind. T.                    | NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of 23-26-19. Jan. 16, 1903.  |
| Charles E. Ketchum, Vinita, Ind. T.                   | SE. 10 acres lot 3, NE $\frac{1}{4}$ SW $\frac{1}{4}$ W. 19.80 acres lot 3, NE. 10 acres lot 3, of 7-27-20. Jan. 16, 1903.  |
| James S. Ketchum, Vinita, Ind. T.                     | S. E. 10 acres lot 1, SE $\frac{1}{4}$ SW $\frac{1}{4}$ W. 19.93 acres lot 1, NE. 10 acres lot 1, of 7-27-20. Jan. 16, 1903.  |
| Clarence R. Ketchum, Vinita, Ind. T.                  | NE. 10 acres lot 2, lot 1, W. 19.91 acres lot 2, SE. 10 acres lot 2, of 18-27-20. Jan. 16, 1903.  |
| Joseph B. Ketchum, Vinita, Ind. T.                    | SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ N. $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of 13-27-19. Jan. 16, 1903.  |
| Ella L. Spickerman, Talala, Ind. T.                   | SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ N. $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of 21-24-15. Jan. 16, 1903.   |

*List of names of persons who have applied for land in the Cherokee Nation, which is included within the Delaware segregation—Continued.*

| Name and post-office.                          | Description and date.   |
|--|---|
| Hellen J. Spiekerman, Talala, Ind. T. ....     | SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ N. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 25-24-15. Jan. 16, 1903.  |
| William Glenn Spiekerman, Talala, Ind. T. .... | SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ N. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 25-24-15. Jan. 16, 1903.  |
| Henry H. Byrd, Chelsea, Ind. T. ....           | N. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 32-21-17. Jan. 20, 1903.  |
| Lucy Daniels, Bartlesville, Ind. T. ....       | SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 13-25-12. Jan. 26, 1903.   |
| Amos W. Lord, Tulsa, Ind. T. ....              | NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ S. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 19-21-13. Jan. 28, 1903.  |
| Samuel S. Foreman, Tahlequah, Ind. T. ....     | NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ S. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 30-21-13. Jan. 30, 1903.  |
| Minnie O. Foreman, Tahlequah, Ind. T. ....     | SE. 10 acres lot 2, SW. 0.91 acres lot 2, of 30-21-13. Jan. 30, 1903.   |
| Alice Tidwell, Ballard, Ind. T. ....           | NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ S. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 14-28-19. Jan. 30, 1903.  |
| Robert G. Tidwell, Ballard, Ind. T. ....       | NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ S. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 14-28-19. Jan. 31, 1903.  |
| Allen H. Gibson, Pawhuska, Okla. ....          | NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ W. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 6-27-13. Feb. 2, 1903.  |
| Charles D. Hawkins, Vinita, Ind. T. ....       | NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 25-21-21. Feb. 4, 1903.  |
| William C. Hempton, Whiteoak, Ind. T. ....     | N. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ N. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ N. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 23-25-19. Feb. 5, 1903.   |
| Flora Smith, Tulsa, Ind. T. ....               | NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ E. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 2-21-12. Feb. 6, 1903.  |
| David Smith, Tulsa, Ind. T. ....               | SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ E. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 2-21-12. Feb. 6, 1903.  |
| Gladys Smith, Tulsa, Ind. T. ....              | SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ less 2.48 acres St. L. and S. F. R. R. right of way, of 28-20-13. Feb. 6, 1903.   |
| Noody Smith, Tulsa, Ind. T. ....               | NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 28-20-13. Feb. 6, 1903.  |
| Martha M. Smith, Whiteoak, Ind. T. ....        | N. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 5-21-19. Feb. 6, 1903.  |
| William P. Ross, Tahlequah, Ind. T. ....       | SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ S. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 9-25-13. Feb. 7, 1903.  |
| Josie M. Carr, Bartlesville, Ind. T. ....      | SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ W. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 25-27-12. Feb. 7, 1903.   |
| James L. McCoy, Bartlesville, Ind. T. ....     | NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 32-26-13. Feb. 9, 1903.  |
| Annie E. Johnson, Dewey, Ind. T. ....          | SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ W. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 30-27-13. Feb. 9, 1903.   |
| Edward G. Ross, Tahlequah, Ind. T. ....        | SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 9-25-13. W. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 9-25-13. Feb. 7, 1903.  |
| William Humphrey, Vinita, Ind. T. ....         | NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ E. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 3-28-19. E. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 3-28-19. Feb. 7, 1903.   |
| Sarah Humphrey, Kinnison, Ind. T. ....         | NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ E. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 3-28-19. Feb. 10, 1903.   |
| Watt Cochran, Stilwell, Ind. T. ....           | NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ less 1.86 acres M. K. and O. R. R. right of way, of 24-27-13. Feb. 12, 1903.  |
| Charles Parks, Bartlesville, Ind. T. ....      | N. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 11-25-12. Feb. 12, 1903.  |
| Martha S. Parks, Bartlesville, Ind. T. ....    | W. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 21-26-12; NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 25-26-12. Feb. 12, 1903.   |
| Anna Thornton, Bartlesville, Ind. T. ....      | SE. 10 acres lot 2, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. 10 acres lot 3, NW. 10.59 acres lot 3, less 3.57 acres K. O. C. and S. R. R. right of way; SW. 10.59 acres lot 3, less 2.48 acres K. O. C. and S. R. R. right of way; SE. 10 acres lot 3, less 1.21 acres K. O. C. and S. R. R. right of way; SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 30-26-13. Feb. 13, 1903. |
| Wm. L. Thornton, Bartlesville, Ind. T. ....    | W. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ E. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ lot 4, less 1.28 acres K. O. C. and S. R. R. right of way; NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 30-26-13. Feb. 13, 1903.  |
| Catherine Henry, Chelsea, Ind. T. ....         | N. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 21-25-17. Feb. 14, 1903.  |
| Leroy Hurd, Whiteoak, Ind. T. ....             | SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ N. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 32-25-19. Feb. 11, 1903.  |
| James F. Hurd, Whiteoak, Ind. T. ....          | N. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ N. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 32-25-19. Feb. 11, 1903.   |
| Harris R. Gourd, Alluwe, Ind. T. ....          | S. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 26-25-17. Feb. 16, 1903.  |
| Charles C. R. Gourd, Alluwe, Ind. T. ....      | S. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 21-25-17. Feb. 16, 1903.  |
| John L. Hawkins, Vinita, Ind. T. ....          | S. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 15-21-21; NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 22-24-21. Feb. 17, 1903.   |
| Emma B. Severs, Muskogee, Ind. T. ....         | SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 28-22-19. Feb. 19, 1903.   |
| Sanna Severs, Muskogee, Ind. T. ....           | SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 21-22-19. Feb. 19, 1903.   |
| Charles J. Severs, Muskogee, Ind. T. ....      | E. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ N. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ W. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 28-22-19. Feb. 19, 1903.  |
| John Harvey, Whiteoak, Ind. T. ....            | NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ lot 1, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 1-21-18. Feb. 20, 1903.   |
| Belle Keys, Bartlesville, Ind. T. ....         | Lot 4 of 19-26-13. Feb. 21, 1903.   |
| Pearl Keys, Bartlesville, Ind. T. ....         | Lot 3 of 19-26-13. Feb. 21, 1903.   |
| Walter Corniele, Catale, Ind. T. ....          | NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 12-24-18. Feb. 26, 1903.   |
| Thomas C. Corniele, Catale, Ind. T. ....       | SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ less 0.91 acre St. L. and S. F. R. R. right of way, of 12-24-18. Feb. 26, 1903.   |
| Lincoln R. Corniele, Catale, Ind. T. ....      | E. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ less 3.75 acres St. L. and S. F. R. R. right of way, of 12-24-18. Feb. 26, 1903.   |
| Sallie Taylor, Chelsea, Ind. T. ....           | SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ E. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 27-24-17. Feb. 26, 1903.  |
| William Keeler, Bartlesville, Ind. T. ....     | SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 36-27-12. Feb. 26, 1903.   |

List of names of persons who have applied for land in the Cherokee Nation, which is included within the Delaware segregation—Continued.

| Name and post-office.                           | Description and date.   |
|---|---|
| Homer Billingslea, Vinita, Ind. T. ....         | SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , N. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , of 9-23-19. Mar. 3, 1903.  |
| Philetus L. A. Reed, Bartlesville, Ind. T. .... | SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , of 27-29-13. Mar. 4, 1903.  |
| Ala M. Reed, Bartlesville, Ind. T. ....         | SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , NE. $\frac{1}{4}$ N. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , of 22-29-13; NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ , of 28-29-13. Mar. 4, 1903.              |
| Alice L. V. Reed, Bartlesville, Ind. T. ....    | SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ , N. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , of 34-29-13. Mar. 4, 1903.   |
| Linna I. Reed, Bartlesville, Ind. T. ....       | NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ , NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ , S. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ , of 28-29-13. Mar. 4, 1903.   |
| Naney A. Reed, Bartlesville, Ind. T. ....       | NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ , S. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ , of 27-29-13. Mar. 4, 1903.   |
| Joel Snagee, Bartlesville, Ind. T. ....         | S. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ , S. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ , NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ , of 31-26-13. NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , of 32-26-13. Mar. 4, 1903. |
| Dovie Snagee, Bartlesville, Ind. T. ....        | NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ , of 32-26-13. SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ , N. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ , of 31-26-13. Mar. 4, 1903.  |
| Evaline Snagee, Bartlesville, Ind. T. ....      | S. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , of 32-26-13. S. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , of 32-26-13. Mar. 4, 1903.   |
| Floyd Snagee, Bartlesville, Ind. T. ....        | SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ , NE. $\frac{1}{4}$ , of 31-26-13. S. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , of 32-26-13. Mar. 4, 1903.  |
| David Snagee, Bartlesville, Ind. T. ....        | N. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , N. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , of 31-26-13. Mar. 4, 1903.  |
| Barney Davis, Bartlesville, Ind. T. ....        | N. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , of 25-27-13. Mar. 4, 1903.   |
| Mary Davis, Bartlesville, Ind. T. ....          | NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ , W. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ , of 24-27-13. E. 20 acres lot 4, SW. 6.82 acres lot 4, of 19-27-14. Mar. 4, 1903.   |
| Thomas Fox, Catale, Ind. T. ....                | Lot 6, lot 7, less 0.61 acre St. L. and S. F. R. R. right of way, of 6-21-19. Mar. 5, 1903.   |
| George W. Enton, Claremore, Ind. T. ....        | W. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , of 1-23-12. Mar. 5, 1903.  |
| Jennie O. Morton, Ramona, Ind. T. ....          | NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , of 1-26-12. Mar. 5, 1903.   |
| Eva J. Brown, Coffeyville, Kans. ....           | NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , of 29-29-15. Mar. 6, 1903.  |
| Joseph Ann Hall, Vinita, Ind. T. ....           | NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , of 36-27-12. Mar. 6, 1903.  |
| Mary Scullawl, Bartlesville, Ind. T. ....       | SW. 10.03 acres lot 2, SE. 10 acres lot 2, NW. 10.05 acres lot 3, E. 20 acres lot 3, SW. 10.06 acres lot 3, of 18-25-13. Mar. 6, 1903.  |
| William Scullawl, Bartlesville, Ind. T. ....    | E. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , 10.02 acres lot 2, NE. 10 acres lot 2, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , of 18-25-13. Mar. 6, 1903.          |
| Richard Scullawl, Bartlesville, Ind. T. ....    | NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , of 18-25-13. Mar. 6, 1903.  |
| Jesse Reese, Vinita, Ind. T. ....               | SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ , E. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , of 4-21-19. Mar. 9, 1903.  |
| Joseph Nelson Robinson, Chelsea, Ind. T. ....   | NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , of 34-25-16. Mar. 9, 1903.  |
| Valentine W. Needham, Lawton, Ind. T. ....      | SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , SE. 10 acres lot 2, SW. 10 acres lot 2, N. 20.96 acres lot 2, of 4-27-13. Mar. 13, 1903.  |
| Allie A. Needham, Lawton, Ind. T. ....          | NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ , of 4-27-13. Mar. 13, 1903.  |
| Flora B. Thompson, Vinita, Ind. T. ....         | NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , less 1.29 acres M. K. and T. R. R. right of way, of 36-21-19. Mar. 13, 1903.  |
| Perry H. Beeson, Fairland, Ind. T. ....         | N. $\frac{1}{4}$ NW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , N. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , of 22-22-22. Mar. 14, 1903.   |
| Perry H. Beeson, Fairland, Ind. T. ....         | SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , of 22-22-22. Mar. 14, 1903.   |
| William A. Carr, Bartlesville, Ind. T. ....     | NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ , SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ , E. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ , NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ , of 25-27-12. Mar. 14, 1903.  |
| William I. Brewer, Eagle, Ind. T. ....          | SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , S. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , of 26-28-19. Mar. 14, 1903.  |
| Abraham Locust, Stilwell, Ind. T. ....          | SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , N. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , of 18-27-16. Mar. 16, 1903.  |
| Ross Locust, Stilwell, Ind. T. ....             | NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ , SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ , N. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ , of 18-27-16. Mar. 16, 1903.  |
| Luke Locust, Stilwell, Ind. T. ....             | SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , NE. $\frac{1}{4}$ , N. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ , SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ , of 18-27-16. Mar. 16, 1903.  |
| Mae Evelyn Hall, Vinita, Ind. T. ....           | SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , of 25-27-12. Mar. 7, 1903.  |
| Susan Swan, Foyil, Ind. T. ....                 | NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , of 27-24-17. Mar. 18, 1903.   |
| James M. Trout, Big Cabin, Ind. T. ....         | SW. 7.97 acres lot 2 of 30-24-20. Mar. 18, 1903.  |
| William L. Harlin, Whiteoak, Ind. T. ....       | SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ , W. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , W. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , of 32-25-19. Mar. 18, 1903.   |
| William G. Williams, Whiteoak, Ind. T. ....     | W. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ , of 29-25-19. Mar. 19, 1903.  |
| Albert V. McIlhee, Kinnison, Ind. T. ....       | NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , S. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , of 7-28-20. Mar. 19, 1903.   |
| Edna J. Trout, Big Cabin, Ind. T. ....          | SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , N. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , of 31-21-20. Mar. 19, 1903.  |
| Jessie Brewer, Eagle, Ind. T. ....              | NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , E. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , of 26-28-19. Mar. 21, 1903.  |
| Johnson Waters, Braggs, Ind. T. ....            | S. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , of 13-27-12. Mar. 21, 1903.  |
| Sarah Waters, Braggs, Ind. T. ....              | SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , of 13-27-12. Mar. 21, 1903.   |
| Tom Waters, Braggs, Ind. T. ....                | SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ , SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , N. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , of 12-27-12. Mar. 21, 1903.  |
| Nellie Waters, Braggs, Ind. T. ....             | NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ , of 13-27-12; SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ , SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ , of 12-27-12. Mar. 21, 1903.  |

*List of names of persons who have applied for land in the Cherokee Nation, which is included within the Delaware segregation—Continued.*

| Name and post-office.                            | Description and date.   |
|--|---|
| Lydia Waters, Braggs, Ind. T.....                | N. $\frac{1}{2}$ NW. $\frac{1}{2}$ NE. $\frac{1}{2}$ of 13-27-12; S. $\frac{1}{2}$ NW. $\frac{1}{2}$ SE. $\frac{1}{2}$ SW. $\frac{1}{2}$ SE. $\frac{1}{2}$ NE. $\frac{1}{2}$ N. $\frac{1}{2}$ SE. $\frac{1}{2}$ SE. $\frac{1}{2}$ SE. $\frac{1}{2}$ SE. $\frac{1}{2}$ of 12-27-12. Mar. 21, 1903.   |
| Florence Smith, Fairland, Ind. T.....            | SW. $\frac{1}{2}$ SE. $\frac{1}{2}$ NE. $\frac{1}{2}$ of 22-22-22. Mar. 25, 1903.   |
| Othie A. Smith, Fairland, Ind. T.....            | N. $\frac{1}{2}$ SE. $\frac{1}{2}$ NE. $\frac{1}{2}$ SE. $\frac{1}{2}$ SE. $\frac{1}{2}$ NE. $\frac{1}{2}$ of 22-22-22. Mar. 25, 1903.  |
| Tom Wolfe, Maysville, Ark.....                   | SW. $\frac{1}{2}$ NW. $\frac{1}{2}$ NE. $\frac{1}{2}$ N. $\frac{1}{2}$ NW. $\frac{1}{2}$ NE. $\frac{1}{2}$ SE. $\frac{1}{2}$ NW. $\frac{1}{2}$ NE. $\frac{1}{2}$ of 7-26-23. Mar. 26, 1903.   |
| Bear Scullaw, Dawson, Ind. T.....                | SW. $\frac{1}{2}$ SW. $\frac{1}{2}$ NW. $\frac{1}{2}$ SE. $\frac{1}{2}$ SW. $\frac{1}{2}$ SW. $\frac{1}{2}$ SE. $\frac{1}{2}$ SW. $\frac{1}{2}$ E. $\frac{1}{2}$ SE. $\frac{1}{2}$ SW. $\frac{1}{2}$ of 31-20-13. Mar. 27, 1903.  |
| Daisy D. Byrd, Chelsea, Ind. T.....              | E. $\frac{1}{2}$ SE. $\frac{1}{2}$ NW. $\frac{1}{2}$ SW. $\frac{1}{2}$ SE. $\frac{1}{2}$ NW. $\frac{1}{2}$ NW. $\frac{1}{2}$ SE. $\frac{1}{2}$ NW. $\frac{1}{2}$ E. $\frac{1}{2}$ SW. $\frac{1}{2}$ NW. $\frac{1}{2}$ of 32-21-17. Mar. 27, 1903.   |
| Frances Martin, Catale, Ind. T.....              | NW. $\frac{1}{2}$ SE. $\frac{1}{2}$ SW. $\frac{1}{2}$ SE. $\frac{1}{2}$ of 1-24-18. Mar. 28, 1903.  |
| Fred Martin, Catale, Ind. T.....                 | SW. $\frac{1}{2}$ SW. $\frac{1}{2}$ SE. $\frac{1}{2}$ SW. $\frac{1}{2}$ of 22-25-18. Mar. 28, 1903.   |
| Eliza Martin, Catale, Ind. T.....                | SE. $\frac{1}{2}$ NW. $\frac{1}{2}$ SW. $\frac{1}{2}$ NE. $\frac{1}{2}$ SE. $\frac{1}{2}$ N. $\frac{1}{2}$ NW. $\frac{1}{2}$ SW. $\frac{1}{2}$ SW. $\frac{1}{2}$ NW. $\frac{1}{2}$ of 22-25-18. Mar. 28, 1903.  |
| Andrew H. Norwood, Dewey, Ind. T.....            | NW. $\frac{1}{2}$ NW. $\frac{1}{2}$ SW. $\frac{1}{2}$ S. $\frac{1}{2}$ NW. $\frac{1}{2}$ SW. $\frac{1}{2}$ NE. $\frac{1}{2}$ NW. $\frac{1}{2}$ SW. $\frac{1}{2}$ of 21-27-13; N. $\frac{1}{2}$ SW. $\frac{1}{2}$ NW. $\frac{1}{2}$ less 0.67 acre M., K. and O. R. R. right of way; SW. $\frac{1}{2}$ NW. $\frac{1}{2}$ of 28-27-13. Mar. 31, 1903. |
| Fred Keeler, Bartlesville, Ind. T.....           | S. $\frac{1}{2}$ NE. $\frac{1}{2}$ NW. $\frac{1}{2}$ N. $\frac{1}{2}$ SE. $\frac{1}{2}$ NW. $\frac{1}{2}$ NE. 10 acres lot 2 of 19-26-13. Mar. 31, 1903.  |
| Maud E. Coker, Claremore, Ind. T.....            | SE. $\frac{1}{2}$ SE. $\frac{1}{2}$ of 33-28-14. Apr. 1, 1903.  |
| Losson Winkler, Tyro, Kans.....                  | SE. $\frac{1}{2}$ NE. $\frac{1}{2}$ SE. $\frac{1}{2}$ of 5-28-14. Apr. 2, 1903.   |
| Annie B. Winkler, Wann, Ind. T.....              | NW. $\frac{1}{2}$ NW. $\frac{1}{2}$ SE. $\frac{1}{2}$ SW. $\frac{1}{2}$ NE. $\frac{1}{2}$ SE. $\frac{1}{2}$ NW. $\frac{1}{2}$ NE. $\frac{1}{2}$ SW. $\frac{1}{2}$ NW. $\frac{1}{2}$ N. $\frac{1}{2}$ NW. $\frac{1}{2}$ NE. $\frac{1}{2}$ of 9-28-11. Apr. 2, 1903.  |
| Mary Violet Winkler, Wann, Ind. T.....           | W. $\frac{1}{2}$ SE. $\frac{1}{2}$ NE. $\frac{1}{2}$ S. $\frac{1}{2}$ NE. $\frac{1}{2}$ NE. $\frac{1}{2}$ N. $\frac{1}{2}$ NE. $\frac{1}{2}$ NE. $\frac{1}{2}$ of 9-28-11. Apr. 2, 1903.  |
| Nancy Sam, Stilwell, Ind. T.....                 | NW. $\frac{1}{2}$ NE. $\frac{1}{2}$ SW. $\frac{1}{2}$ NE. $\frac{1}{2}$ NE. $\frac{1}{2}$ N. $\frac{1}{2}$ NE. $\frac{1}{2}$ NE. $\frac{1}{2}$ SE. $\frac{1}{2}$ NE. $\frac{1}{2}$ NE. $\frac{1}{2}$ of 22-24-13. Apr. 3, 1903.   |
| Levi Sam, Stilwell, Ind. T.....                  | SW. $\frac{1}{2}$ NE. $\frac{1}{2}$ NW. $\frac{1}{2}$ SE. $\frac{1}{2}$ NE. $\frac{1}{2}$ S. $\frac{1}{2}$ SE. $\frac{1}{2}$ NE. $\frac{1}{2}$ NE. $\frac{1}{2}$ SE. $\frac{1}{2}$ NE. $\frac{1}{2}$ of 22-24-13. Apr. 3, 1903.   |
| Susan Shaw, Caney, Kans.....                     | NE. $\frac{1}{2}$ NW. $\frac{1}{2}$ N. $\frac{1}{2}$ SE. $\frac{1}{2}$ NW. $\frac{1}{2}$ SE. $\frac{1}{2}$ SE. $\frac{1}{2}$ NW. $\frac{1}{2}$ of 10-28-13. Apr. 3, 1903.   |
| James Shaw, Caney, Kans.....                     | NW. $\frac{1}{2}$ NE. $\frac{1}{2}$ N. $\frac{1}{2}$ SW. $\frac{1}{2}$ NE. $\frac{1}{2}$ of 10-28-13. Apr. 3, 1903.   |
| Lillie Clark, Chelsea, Ind. T.....               | SE. $\frac{1}{2}$ NW. $\frac{1}{2}$ SW. $\frac{1}{2}$ NE. $\frac{1}{2}$ NW. $\frac{1}{2}$ N. $\frac{1}{2}$ NE. $\frac{1}{2}$ NW. $\frac{1}{2}$ SE. $\frac{1}{2}$ NE. $\frac{1}{2}$ NW. $\frac{1}{2}$ of 33-25-17. Apr. 6, 1903.   |
| John Hilderbrand, Braggs, Ind. T.....            | S. $\frac{1}{2}$ SE. $\frac{1}{2}$ SE. $\frac{1}{2}$ of 13-27-12; NE. $\frac{1}{2}$ NE. $\frac{1}{2}$ NE. $\frac{1}{2}$ E. $\frac{1}{2}$ NW. $\frac{1}{2}$ NE. $\frac{1}{2}$ W. $\frac{1}{2}$ NE. $\frac{1}{2}$ NE. $\frac{1}{2}$ SE. $\frac{1}{2}$ NE. $\frac{1}{2}$ NE. $\frac{1}{2}$ of 21-27-12. Apr. 6, 1903.                                  |
| Katie Hilderbrand, Braggs, Ind. T.....           | W. $\frac{1}{2}$ NW. $\frac{1}{2}$ NE. $\frac{1}{2}$ W. $\frac{1}{2}$ SW. $\frac{1}{2}$ NE. $\frac{1}{2}$ NE. $\frac{1}{2}$ SW. $\frac{1}{2}$ NE. $\frac{1}{2}$ of 21-27-12. Apr. 6, 1903.  |
| Winnie M. Scott, Vinita, Ind. T.....             | W. $\frac{1}{2}$ SW. $\frac{1}{2}$ SE. $\frac{1}{2}$ NE. $\frac{1}{2}$ SE. $\frac{1}{2}$ SW. $\frac{1}{2}$ S. $\frac{1}{2}$ SE. $\frac{1}{2}$ SW. $\frac{1}{2}$ NW. $\frac{1}{2}$ SE. $\frac{1}{2}$ SW. $\frac{1}{2}$ of 22-24-21. Apr. 7, 1903.  |
| Velma D. Scott, Vinita, Ind. T.....              | S. $\frac{1}{2}$ SW. $\frac{1}{2}$ SW. $\frac{1}{2}$ NE. $\frac{1}{2}$ SW. $\frac{1}{2}$ SW. $\frac{1}{2}$ of 22-24-21. Apr. 7, 1903.   |
| Colonel Griegs, Caney, Kans.....                 | S. 20 acres lot 2, N. 19.02 acres lot 2 of 4-28-13. Apr. 7, 1903.   |
| Frank Griegs, Caney, Kans.....                   | S. 20 acres lot 1, N. 19.17 acres lot 1 of 4-28-13. Apr. 7, 1903.   |
| Abbie Hawkins, Vinita, Ind. T.....               | NW. $\frac{1}{2}$ SE. $\frac{1}{2}$ NE. $\frac{1}{2}$ NE. $\frac{1}{2}$ SW. $\frac{1}{2}$ W. $\frac{1}{2}$ NE. $\frac{1}{2}$ SW. $\frac{1}{2}$ SE. $\frac{1}{2}$ NE. $\frac{1}{2}$ SW. $\frac{1}{2}$ of 15-24-21. Apr. 8, 1903.   |
| Frances Patterson, Caney, Kans.....              | NE. $\frac{1}{2}$ SE. $\frac{1}{2}$ SW. $\frac{1}{2}$ SW. $\frac{1}{2}$ SE. $\frac{1}{2}$ SW. $\frac{1}{2}$ NW. $\frac{1}{2}$ SE. $\frac{1}{2}$ SW. $\frac{1}{2}$ SW. $\frac{1}{2}$ NE. $\frac{1}{2}$ SW. $\frac{1}{2}$ of 3-28-13. Apr. 8, 1903.   |
| York A. Patterson, Caney, Kans.....              | N. $\frac{1}{2}$ NE. $\frac{1}{2}$ SW. $\frac{1}{2}$ SE. $\frac{1}{2}$ NE. $\frac{1}{2}$ SW. $\frac{1}{2}$ of 3-28-13. Apr. 8, 1903.  |
| James Cochran, Stilwell, Ind. T.....             | NW. $\frac{1}{2}$ SW. $\frac{1}{2}$ of 4-28-13; N. $\frac{1}{2}$ NE. $\frac{1}{2}$ SE. $\frac{1}{2}$ SE. $\frac{1}{2}$ NE. $\frac{1}{2}$ SE. $\frac{1}{2}$ of 5-28-13. Apr. 10, 1903.   |
| Sallie Cochran, Stilwell, Ind. T.....            | SE. $\frac{1}{2}$ NW. $\frac{1}{2}$ SE. $\frac{1}{2}$ SW. $\frac{1}{2}$ NE. $\frac{1}{2}$ SE. $\frac{1}{2}$ W. $\frac{1}{2}$ SE. $\frac{1}{2}$ SE. $\frac{1}{2}$ N. $\frac{1}{2}$ NW. $\frac{1}{2}$ SE. $\frac{1}{2}$ NW. $\frac{1}{2}$ SE. $\frac{1}{2}$ of 5-28-13. Apr. 10, 1903.  |
| Nora E. Sarcouxie, Bartlesville, Ind. T.....     | N. $\frac{1}{2}$ NE. $\frac{1}{2}$ SW. $\frac{1}{2}$ S. $\frac{1}{2}$ SE. $\frac{1}{2}$ NW. $\frac{1}{2}$ NE. $\frac{1}{2}$ SE. $\frac{1}{2}$ NW. $\frac{1}{2}$ E. $\frac{1}{2}$ SW. $\frac{1}{2}$ NW. $\frac{1}{2}$ NW. $\frac{1}{2}$ SE. $\frac{1}{2}$ NW. $\frac{1}{2}$ of 10-25-13. Apr. 11, 1903.  |
| Roy L. Sarcouxie, Bartlesville, Ind. T.....      | NW. $\frac{1}{2}$ SW. $\frac{1}{2}$ SE. $\frac{1}{2}$ NE. $\frac{1}{2}$ SW. $\frac{1}{2}$ SW. $\frac{1}{2}$ NE. $\frac{1}{2}$ SW. $\frac{1}{2}$ NW. $\frac{1}{2}$ SE. $\frac{1}{2}$ SW. $\frac{1}{2}$ NE. $\frac{1}{2}$ SW. $\frac{1}{2}$ of 10-25-13. Apr. 11, 1903.   |
| Alex. Proctor, Spavinaw, Ind. T.....             | W. $\frac{1}{2}$ SE. $\frac{1}{2}$ SE. $\frac{1}{2}$ NE. $\frac{1}{2}$ SE. $\frac{1}{2}$ SE. $\frac{1}{2}$ SE. $\frac{1}{2}$ NE. $\frac{1}{2}$ SE. $\frac{1}{2}$ W. $\frac{1}{2}$ NE. $\frac{1}{2}$ SE. $\frac{1}{2}$ NE. $\frac{1}{2}$ of 17-23-19. Apr. 11, 1903.   |
| Thomas Proctor, Spavinaw, Ind. T.....            | N. $\frac{1}{2}$ NE. $\frac{1}{2}$ NE. $\frac{1}{2}$ of 20-23-19; SE. $\frac{1}{2}$ SE. $\frac{1}{2}$ SE. $\frac{1}{2}$ of 17-23-19. Apr. 11, 1903.   |
| Osa Martin, Chelsea, Ind. T.....                 | SW. $\frac{1}{2}$ SE. $\frac{1}{2}$ SW. $\frac{1}{2}$ SE. $\frac{1}{2}$ SE. $\frac{1}{2}$ N. $\frac{1}{2}$ SE. $\frac{1}{2}$ SE. $\frac{1}{2}$ SE. $\frac{1}{2}$ SE. $\frac{1}{2}$ SE. $\frac{1}{2}$ of 22-25-13. Apr. 13, 1903.  |
| William H. H. Scudder, Jr., Chelsea, Ind. T..... | SW. 9.79 acres lot 1, of 30-23-16; NW. 9.01 acres lot 1, E. 20 acres lot 1, of 30-23-16. Apr. 15, 1903.   |
| Grethen J. Merrell, Big Cabin, Ind. T.....       | NE. $\frac{1}{2}$ NE. $\frac{1}{2}$ NW. $\frac{1}{2}$ less 2.41 acres M., K. and T. R. R. right of way of 19-24-20. Apr. 13, 1903.  |
| Susie McKnight, Alluwe, Ind. T.....              | N. $\frac{1}{2}$ SW. $\frac{1}{2}$ SE. $\frac{1}{2}$ SE. $\frac{1}{2}$ SW. $\frac{1}{2}$ SE. $\frac{1}{2}$ of 35-25-16; SW. $\frac{1}{2}$ SW. $\frac{1}{2}$ SE. $\frac{1}{2}$ of 35-25-16. Apr. 16, 1903.   |
| George L. McKnight, Alluwe, Ind. T.....          | SW. $\frac{1}{2}$ NW. $\frac{1}{2}$ SE. $\frac{1}{2}$ of 35-25-16. Apr. 16, 1903.   |
| James E. Mllam, Chelsea, Ind. T.....             | E. $\frac{1}{2}$ SE. $\frac{1}{2}$ SW. $\frac{1}{2}$ of 28-25-17. Apr. 16, 1903.  |
| William G. Mllam, Chelsea, Ind. T.....           | NW. $\frac{1}{2}$ SE. $\frac{1}{2}$ SW. $\frac{1}{2}$ of 28-25-17. Apr. 16, 1903.   |
| Lizzie Lenowishna, Dewey, Ind. T.....            | NE. $\frac{1}{2}$ NE. $\frac{1}{2}$ less 0.78 acre K., O. C. and S. R. R. right of way; NW. $\frac{1}{2}$ SE. $\frac{1}{2}$ NE. $\frac{1}{2}$ E. $\frac{1}{2}$ SE. $\frac{1}{2}$ NE. $\frac{1}{2}$ SW. $\frac{1}{2}$ SE. $\frac{1}{2}$ NE. $\frac{1}{2}$ of 11-27-13. Apr. 17, 1903.  |
| Silas Longbone, Dewey, Ind. T.....               | E. 20 acres lot 1, NW. $\frac{1}{2}$ NE. $\frac{1}{2}$ NW. $\frac{1}{2}$ of 30-25-14; W. 19.65 acres lot 1, of 30-25-14. Apr. 17, 1903.   |
| Roy Longbone, Dewey, Ind. T.....                 | SW. $\frac{1}{2}$ SE. $\frac{1}{2}$ NW. $\frac{1}{2}$ N. $\frac{1}{2}$ SE. $\frac{1}{2}$ NW. $\frac{1}{2}$ SE. $\frac{1}{2}$ SE. $\frac{1}{2}$ NW. $\frac{1}{2}$ E. $\frac{1}{2}$ NE. $\frac{1}{2}$ NW. $\frac{1}{2}$ of 30-25-14. Apr. 17, 1903.   |
| Jesse Longbone, Dewey, Ind. T.....               | E. 20 acres lot 2; SW. $\frac{1}{2}$ SE. $\frac{1}{2}$ NW. $\frac{1}{2}$ W. 19.77 acres lot 2, of 30-25-14. Apr. 17, 1903.  |

List of names of persons who have applied for land in the Cherokee Nation, which is included within the Delaware segregation—Continued.

| Name and post-office.                                     | Description and date.   |
|---|---|
| Mary Wilson, Dewey, Ind. T. ....                          | SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ N. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 12-27-13. Apr. 17, 1903.  |
| Minnie Wilson, Dewey, Ind. T. ....                        | NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 17-27-14; S. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ N. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 8-27-14. Apr. 17, 1903.   |
| Charles Wilson, Dewey, Ind. T. ....                       | S. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ E. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 8-27-14; NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 17-27-14. Apr. 17, 1903.   |
| Lillie Wilson, Dewey, Ind. T. ....                        | NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 17-27-14; SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ S. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 8-27-14. Apr. 17, 1903.  |
| Joseph Powell, Dewey, Ind. T. ....                        | N. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 7-27-14; NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 12-27-13. Apr. 17, 1903.  |
| Maud Beck, Siloam Springs, Ark. ....                      | E. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 5-28-13. Apr. 17, 1903. |
| Vivia Beck, Siloam Springs, Ark. ....                     | S. 20 acres lot 1, NW. 8.92 acres lot 3, N. 17.50 acres lot 4, of 5-28-13. Apr. 17, 1903.   |
| Lucian Beck, Siloam Springs, Ark. ....                    | NE. 8.92 acres lot 3, of 5-28-13. Apr. 17, 1903.  |
| Macy Beck, Siloam Springs, Ark. ....                      | N. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ S. 20 acres lot 3, of 5-28-13. Apr. 17, 1903.  |
| Newton Trout, Spavinaw, Ind. T. ....                      | S. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 30-24-20. Apr. 18, 1903.  |
| Jesse Martin, Ramona, Ind. T. ....                        | SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ N. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 22-25-13. Apr. 18, 1903.                  |
| Penn Phillips, Vinita, Ind. T. ....                       | Lot 2, SE. 10 acres lot 1, NE. 10 acres lot 1, W. 19.61 acres lot 1, of 31-21-13. Apr. 18, 1903.  |
| Callie Getup, Ramona, Ind. T. ....                        | E. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ N. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 16-27-13. Apr. 20, 1903. |
| William Clark, jr., Ramona, Ind. T. ....                  | SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ N. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 16-27-13. Apr. 20, 1903.  |
| Bettie Woodall, Vinita, Ind. T. ....                      | W. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 17-21-21. Apr. 20, 1903.  |
| Malinda Secondine, care Robert Harvey, Whiteoak, Ind. T.  | NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 8-24-19; NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 4-24-19; SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 5-21-19. Apr. 22, 1903.  |
| Harrison Secondine, care Robert Harvey, Whiteoak, Ind. T. | SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ N. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 9-24-19; SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 4-24-19. Apr. 22, 1903.       |
| Mary E. Sears, nee Bennett, Bartlesville, Ind. T.         | NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ N. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 31-26-13. Apr. 23, 1903.  |
| Thomas M. Patterson, Afton, Ind. T. ....                  | E. 20 acres lot 2 of 7-24-16. Apr. 24, 1903.  |
| Virgil V. Patterson, Afton, Ind. T. ....                  | W. 16.78 acres lot 2 of 7-24-16. Apr. 24, 1903.   |
| Austaphine C. Kinnison, Kinnison, Ind. T.                 | SW. 9.30 acres lot 2 of 7-28-20. Apr. 24, 1903.   |
| Daniel W. Freeman, Fairland, Ind. T.                      | NE. $\frac{1}{4}$ of 21-22-22. Apr. 24, 1903.   |
| Jennie Buford, Vinita, Ind. T. ....                       | N. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 28-25-20. Apr. 28, 1903.  |
| Johnson Buford, Vinita, Ind. T. ....                      | S. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ less 0.06 acre M. K. and T. R. R. right of way; S. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 28-25-20. Apr. 28, 1903.   |
| Waite Buford, Vinita, Ind. T. ....                        | NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 28-25-20. Apr. 28, 1903.   |
| Benjamin O. Treuman, Cherokee City, Ark.                  | NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ S. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 26-28-19. Apr. 30, 1903.  |
| Nelson Landrum, Vinita, Ind. T. ....                      | SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 5-28-13. Apr. 24, 1903.  |
| Margaret Landrum, Vinita, Ind. T. ....                    | W. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 5-28-13. Apr. 24, 1903.   |
| Margaret Landrum, Vinita, Ind. T. ....                    | N. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 5-28-13. Apr. 24, 1903.   |
| John Landrum, Vinita, Ind. T. ....                        | NW. 8.92 acres lot 3 of 5-28-13. Apr. 24, 1903.   |
| John Landrum, Vinita, Ind. T. ....                        | NE. 8.92 acres lot 3 of 5-28-13. Apr. 24, 1903.   |
| Jim Landrum, jr., Vinita, Ind. T. ....                    | S. 20 acres lot 4, N. 17.50 acres lot 4, of 5-28-13. Apr. 24, 1903.   |
| Do. ....  | N. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 5-28-13. Apr. 24, 1903.   |
| Barbara Landrum, Vinita, Ind. T. ....                     | S. 20 acres lot 3 of 5-28-13. Apr. 24, 1903.  |
| Margaret Landrum, Vinita, Ind. T. ....                    | E. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 5-28-13. Apr. 24, 1903.   |
| Barbara Landrum, Vinita, Ind. T. ....                     | SW. 10 acres lot 3, E. 19.44 acres lot 3, less 3.78 acres K. O. C. and S. R. R. right of way, of 4-28-13. Apr. 24, 1903.  |
| Nelson Landrum, Vinita, Ind. T. ....                      | NW. 9.44 acres lot 3 of 4-28-13. Apr. 24, 1903.   |
| Mencerva Jones, Dewey, Ind. T. ....                       | S. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 26-27-13; N. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ S. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 35-27-13. May 5, 1903.   |
| Beulah M. Lyman, Dewey, Ind. T. ....                      | SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ N. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 36-27-13. May 5, 1903.  |
| Savola R. Lyman, Dewey, Ind. T. ....                      | SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ W. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 26-27-13. May 5, 1903.  |
| Ethel G. Jones, Dewey, Ind. T. ....                       | SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ W. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 35-27-13. May 5, 1903.  |
| Ruth T. Brady, Tulsa, Ind. T. ....                        | NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 25-20-12. May 7, 1903.   |
| Francis B. Fite, Muskogee, Ind. T. ....                   | N. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 29-29-19. May 6, 1903.  |
| Cleo B. Statham, Bartlesville, Ind. T. ....               | SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ less .78 acre K. O. C. and S. R. R. right of way; SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ S. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 36-26-12. May 7, 1903.  |
| Elizabeth Vann, Vinita, Ind. T. ....                      | SE. 10 acres lot 3, less 2.21 acres K. O. C. and S. R. R. right of way, of 4-28-13. May 7, 1903.  |
| Ada Caywood, formerly Ada Foreman, Vinita, Ind. T.        | SW. 10 acres lot 3, NE. 9.44 acres lot 3, less 1.57 acres K. O. C. and S. R. R. right of way, of 4-28-13. May 7, 1903.  |
| Do. ....  | NW. 9.44 acres lot 3 of 4-28-13. May 7, 1903.   |
| Elizabeth Vann, Vinita, Ind. T. ....                      | E. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ less 4.59 acres K. O. C. and S. R. R. right of way; W. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 4-28-15. May 7, 1903.  |
| Sam Shell, Stilwell, Ind. T. ....                         | N. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 36-24-12; SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 25-21-12. May 6, 1903.   |
| Charlie Shell, Stilwell, Ind. T. ....                     | W. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 25-24-12. May 6, 1903.  |
| Sunday White, Stilwell, Ind. T. ....                      | S. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ N. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 36-24-12. May 6, 1903.   |

List of names of persons who have applied for land in the Cherokee Nation, which is included within the Delaware segregation—Continued.

| Name and post-office.   | Description and date.  |
|---|--|
| George White, Stilwell, Ind. T. ....                          | SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 36-24-12. May 6, 1903.  |
| William L. Cowart, Nowata, Ind. T. ....                       | N. $\frac{1}{4}$ S. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 32-26-16. May 12, 1903.   |
| George W. Poplin, Adair, Ind. T. ....                         | E. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 27-23-19. April 30, 1903.  |
| Lettie Brown, formerly Lettie Muldrow, Okcoke, Ind. T. ....   | NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ S. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 22-25-13. May 9, 1903.   |
| Howard Brown, Okcoke, Ind. T. ....                            | SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ N. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 22-25-13. May 9, 1903.   |
| Julia A. Ivey, Sallisaw, Ind. T. ....                         | SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ N. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 21-27-12. May 13, 1903.  |
| William P. Ringo, Nowata, Ind. T. ....                        | SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ E. 20 acres lot 2, E. 20 acres lot 1 less .53 acre K, O. C. and S. R. R. right of way, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 31-26-13. May 11, 1903.  |
| Norris Ruddles, Catoosa, Ind. T. ....                         | SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 28-27-13. May 11, 1903.   |
| Julia Gilstrap, Bartlesville, Ind. T. ....                    | NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ less 3.51 acres M. K. and O. R. R. right of way, of 28-27-13; NW. $\frac{1}{4}$ 13 acres lot 2, E. 20 acres lot 2, SW. $\frac{1}{4}$ 12 acres lot 2, of 18-27-13. May 15, 1903.  |
| Jennie Gilstrap, Bartlesville, Ind. T. ....                   | S. 21 20 acres lot 1, S. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ S. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 18-27-13. May 15, 1903.   |
| Andy R. Nave, jr., Tahlequah, Ind. T. ....                    | NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ less 3.05 acres K. and A. V. R. R. right of way, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ W. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ less 2.73 acres K. and A. V. R. R. right of way, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 18-27-16. May 16, 1903.  |
| George F. Nave, Tahlequah, Ind. T. ....                       | SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ less 3.05 acres K. and A. V. R. R. right of way, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ less 1.53 acres K. and A. V. R. R. right of way, N. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ less 1.52 acres K. and A. V. R. R. right of way, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 18-27-16. May 16, 1903.                           |
| Joanna G. Nave, Tahlequah, Ind. T. ....                       | SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ S. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 18-27-16. May 16, 1903.  |
| Simon McKinzey, Pryororeek, Ind. T. ....                      | SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 22-22-19. May 16, 1903.   |
| Mike Fields, Tahlequah, Ind. T. ....                          | SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 31-16-20. May 16, 1903.   |
| William Wood, Tahlequah, Ind. T. ....                         | N. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ less 1.25 acres reserved for cemetery, of 31-17-22, W. 25 acres lot 2 less 0.92 acre O. and C. C. R. R. right of way of 5-16-22. May 16, 1903.  |
| Nannie L. Dudley, Stilwell, Ind. T. ....                      | N. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ S. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ S. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 28-26-16. May 16, 1903.  |
| Charles W. Willey, Fort Gibson, Ind. T. ....                  | E. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 36-16-19. May 18, 1903.  |
| Janamma Willey, nee Sanders, Fort Gibson, Ind. T. ....        | NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 36-16-19. May 18, 1903.   |
| Milo J. Willey, Fort Gibson, Ind. T. ....                     | NE. 10 acres lot 1 of 36-16-19. May 18, 1903.  |
| Myrtle Willey, Fort Gibson, Ind. T. ....                      | NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 36-16-19. May 18, 1903.   |
| Rachel Clay, Vinita, Ind. T. ....                             | NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 20-25-13. May 18, 1903.   |
| Charley Welch, Bartlesville, Ind. T. ....                     | NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ N. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ S. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 35-27-12. May 20, 1903.   |
| Jesse Welch, Bartlesville, Ind. T. ....                       | S. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ E. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ W. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 35-27-12. May 20, 1903.  |
| Henry Eiffert, Fort Gibson, Ind. T. ....                      | NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 30-16-20. May 20, 1903.   |
| Henry Eiffert, jr., Fort Gibson, Ind. T. ....                 | NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 30-16-20. May 20, 1903.   |
| Sally M. Eiffert, Fort Gibson, Ind. T. ....                   | S. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ N. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 1-15-19. May 20, 1903.  |
| Minnie B. Armstrong, Bartlesville, Ind. T. ....               | W. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 1-26-12. May 21, 1903.   |
| John H. Hilderbrand, jr., Braggs, Ind. T. ....                | E. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 5-28-13. May 22, 1903.   |
| Susan L. Reed, Bartlesville, Ind. T. ....                     | NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ S. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ S. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 28-29-13. May 25, 1903.   |
| Joseph A. Bartles, Dewey, Ind. T. ....                        | NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ less 0.46 acre M. K. and O. R. R. right of way, of 28-27-13. June 1, 1903.   |
| Susie J. Hicks, nee Goodwin, Caney, Kans. ....                | E. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ S. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 27-29-13. July 3, 1903.   |
| Richard L. Hammett, Claremore, Ind. T. ....                   | S. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 32-22-16. July 6, 1903.  |
| Jennie Daugherty, Stilwell, Ind. T. ....                      | S. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ N. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 36-21-12. July 7, 1903.   |
| James M. Hamilton, Dewey, Ind. T. ....                        | NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ less 2.19 acres M. K. and O. R. R. right of way and less 3.66 acres K. O. C. and S. R. R. right of way, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ E. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 32-27-13. July 7, 1903.  |
| Hugh M. Hamilton, Dewey, Ind. T. ....                         | SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ less 0.58 acre K. O. C. and S. R. R. right of way and less 1.71 acres M. K. and O. R. R. right of way, of 32-27-13. July 7, 1903.  |
| Clarence W. Hamilton, Dewey, Ind. T. ....                     | W. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ less 0.58 acre M. K. and O. R. R. right of way and less 1.81 acres K. O. C. and S. R. R. right of way, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ N. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ N. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 32-27-13. July 7, 1903. |
| James P. Fuller, Fort Gibson, Ind. T. ....                    | SW. 10 acres lot 1 of 1-15-19. July 10, 1903.  |
| Rosa L. Fuller, Fort Gibson, Ind. T. ....                     | SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ S. 20 acres lot 2 of 1-15-19. July 10, 1903.   |
| James S. Fuller, Fort Gibson, Ind. T. ....                    | NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 1-15-19. July 10, 1903.   |
| John Jim, care of Thomas W. Triplett, Tahlequah, Ind. T. .... | NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ N. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 31-25-13. July 10, 1903.   |

List of names of persons who have applied for land in the Cherokee Nation, which is included within the Delaware segregation—Continued.

| Name and post-office.                                       | Description and date.  |
|---|--|
| Charles Jim, care of Thomas W. Triplett, Tahlequah, Ind. T. | SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ N. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 31-25-13. July 10, 1903.   |
| Phillip Jim, care of Thomas W. Triplett, Tahlequah, Ind. T. | NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 28-29-13; SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ N. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 29-29-13. July 10, 1903.  |
| Winnie Jim, care of Thomas W. Triplett, Tahlequah, Ind. T.  | E. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ less 1.97 acres K. O. C. and S. R. R. right of way; SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ N. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 29-29-13. July 10, 1903.  |
| Reese Mose, care of Thomas W. Triplett, Tahlequah, Ind. T.  | NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ N. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 31-25-13. July 10, 1903.   |
| Thomas Mose, care of Thomas W. Triplett, Tahlequah, Ind. T. | SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ N. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 31-25-13. July 10, 1903.   |
| Edith Dixon, Welch, Ind. T.                                 | S. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ W. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 28-28-21. July 11, 1903.  |
| Baulah G. Dancor, Collinsville, Ind. T.                     | W. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 24-28-13. July 13, 1903.   |
| James Jackson, Oglesby, Ind. T.                             | SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. 10 acres lot 4, N. 19.91 acres lot 4, SE. 10 acres lot 4, of 1-25-13. July 14, 1903.   |
| Mary Cochran, Tahlequah, Ind. T.                            | S. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 28-26-16. July 14, 1903.   |
| Mamie Boyls, Tahlequah, Ind. T.                             | S. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 28-26-16. July 14, 1903.   |
| Nancy E. Berd, Fort Gibson, Ind. T.                         | SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 31-16-20. July 15, 1903.  |
| Harold B. Berd, Fort Gibson, Ind. T.                        | SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 1-15-19; NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ N. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 31-16-20. July 15, 1903.   |
| William Davis, Fort Gibson, Ind. T.                         | SE. 10 acres lot 1 of 1-15-19; SE. 10 acres lot 3, lot 4, of 6-15-20. July 15, 1903.   |
| Do.   | SW. 10 acres lot 1 of 1-15-19. July 15, 1903.  |
| Mary Cochran, Stilwell, Ind. T.                             | SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ less 1.27 acres M. K. and O. R. R. right of way, of 21-27-13; SE. 10 acres lot 4, N. 20.30 acres lot 4, SW. 10 acres lot 4, of 3-26-13. July 15, 1903.   |
| Ellen Lynch, Fort Gibson, Ind. T.                           | NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 1-15-19. July 16, 1903.   |
| Do.   | SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 1-15-19. July 16, 1903.   |
| Thomas Daniels, Dewey, Ind. T.                              | SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ less 1 acre reserved for cemetery, of 21-27-12. July 15, 1903.   |
| Frank Daniels, Dewey, Ind. T.                               | E. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 29-27-13. July 15, 1903.   |
| Josie Farel Parsons, Collinsville, Ind. T.                  | W. $\frac{1}{4}$ E. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 21-28-13. July 16, 1903.  |
| Jeta Fields, Tahlequah, Ind. T.                             | W. $\frac{1}{4}$ W. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 1-25-13; SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 2-25-13; SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ S. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 2-25-13. July 17, 1903.  |
| Jacob Padget, Stilwell, Ind. T.                             | NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ N. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 13-24-14. July 17, 1903.   |
| James S. Davenport, Vinita, Ind. T.                         | SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ less 0.10 acre M. K. and O. R. R. right of way, of 6-26-13. July 17, 1903.   |
| Cynthia J. Wickliff, Vinita, Ind. T.                        | NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ N. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 14-28-19. July 17, 1903.   |
| Eliza J. Rogers, Dewey, Ind. T.                             | NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 31-27-13. July 20, 1903.  |
| William G. Rogers, Dewey, Ind. T.                           | SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 31-27-13; NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ S. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 29-27-13. July 20, 1903.  |
| Lillie Rogers, Dewey, Ind. T.                               | SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 31-27-13; NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ W. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 29-27-13. July 20, 1903.  |
| Arthur M. Rogers, Dewey, Ind. T.                            | NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. 10 acres lot 3, W. 21.28 acres lot 3, NE. 10 acres lot 3, of 31-27-13. July 20, 1903.  |
| Charles A. Knipe, Bartlesville, Ind. T.                     | W. $\frac{1}{4}$ E. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ E. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ W. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 19-26-13. July 20, 1903.  |
| Lila Knipe, Bartlesville, Ind. T.                           | SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ of 30-26-13. July 20, 1903.  |
| Nellie Knipe, Bartlesville, Ind. T.                         | NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 19-26-13; E. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ N. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ of 30-26-13. July 20, 1903.   |
| Lila Knipe, Bartlesville, Ind. T.                           | SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ W. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ E. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ of 30-26-13. July 20, 1903.  |
| William Johnstone, Bartlesville, Ind. T.                    | SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ less 5.96 acres K. O. C. and S. R. R. right of way, and less 2.12 acres M. K. and O. R. R. right of way, of 1-26-12. July 21, 1903.  |
| Nellie V. Johnstone, Bartlesville, Ind. T.                  | NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ less 1.53 acres M. K. and O. R. R. right of way and station grounds, and less 3.77 acres K. O. C. and S. R. R. right of way and station grounds, of 12-26-12; NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ less 1.90 acres M. K. and O. R. R. right of way, and less 3.66 acres K. O. C. and S. R. R. right of way, of 12-26-12; E. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ less 0.15 acre M. K. and O. R. R. right of way, of 12-26-12; SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ less 0.52 acre M. K. and O. R. R. right of way, and less 0.09 acre K. O. C. and S. R. R. right of way, of 12-26-12. July 21, 1903. |
| Mina Beck, Bartlesville, Ind. T.                            | S. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ N. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ E. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of 7-26-13. Oct. 2, 1903.   |
| Annie McNair, nee Spymbuck, Sperry, Ind. T.                 | NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ SE. 10 acres of lot 3, W. 19.96 acres of lot 3, NE. 10 acres of lot 3 of 19-21-13. Oct. 2, 1903.   |



## EXHIBIT 65.

DEPARTMENT OF THE INTERIOR,

*Washington, October 29, 1903.*THE COMMISSION TO THE FIVE CIVILIZED TRIBES, *Muscogee, Ind. T.*

GENTLEMEN: By letter of October 6, 1903, you were directed to make such examination and investigation as would enable you to determine what tracts of land should be added to the list of lands to be segregated for the protection of the Delaware Indians in the Cherokee Nation, and what tracts embraced in the list heretofore made out should be stricken therefrom. It is important that a final list should be made up and approved as soon as may be. It is equally important, however, that the interests of all concerned should be carefully respected and protected.

In order that the Department may have a better understanding of the condition of affairs, and to the end that speedy action may be taken when you shall submit a new list for action by the Department, these further instructions are given: You will, at your earliest convenience, make up a list of the tracts embraced in the former list which, as shown by the records of your office, are claimed and occupied by Delaware Indians, and to which there are no adverse claims. You will make another list, which shall embrace all tracts claimed by Delaware Indians, but not included in the list heretofore presented to you. You will make a third list, embracing the tracts included in the list heretofore presented, to which some Cherokee citizen other than a Delaware makes claim. You will transmit with each of these lists a statement of the condition of the tracts embraced therein as to the occupancy thereof and improvements thereon so far as the same are known to you, and will also recommend what action should be taken by the Department upon each of such lists.

These instructions are not intended to supersede those of October 6, and you will therefore proceed upon any line of examination and investigation which may have been entered upon under those instructions.

Very respectfully,

E. A. HITCHCOCK, *Secretary.*

## EXHIBIT 66.

DEPARTMENT OF THE INTERIOR,

*Washington, October 30, 1903.*MR. RICHARD C. ADAMS, *Bond Building, Washington, D. C.*

SIR: There is transmitted herewith for your information a copy of departmental letter, dated the 29th instant, and sent to the Commission to the Five Civilized Tribes, instructing it further in the matter of the investigation now being carried on concerning segregated Delaware lands in the Cherokee Nation, Ind. T.

Respectfully,

THOS. RYAN, *Acting Secretary.*

## EXHIBIT 67.

DEPARTMENT OF THE INTERIOR,

COMMISSION TO THE FIVE CIVILIZED TRIBES,

*Muscogee, Ind. T., November 11, 1903.*

RICHARD C. ADAMS, Esq.,

*Bond Building, Washington, D. C.*

DEAR SIR: Receipt is acknowledged of your letter of October 22, 1903, in which you say you have received many letters from Delaware Indians during the last few months, in which it is asserted that their homes and interests are being jeopardized and threatened by the claims of Cherokee of the right to interfere with their segregated lands by filing applications with the Commission and receiving from the Commission papers in recognition of such rights, and stating that the Cherokee, in many instances, have threatened the Delawares in possession with ejection, and have forbidden them trespassing on the lands so claimed by said Cherokee.

You also ask to be advised if the Commission recognizes, or has, at any time, recognized the right of selection for allotment of any lands embraced in the 157,600-acre segregation as made by this Commission, and if not, what is the nature of the notice or claim which such Cherokee are authorized to file with the Commission; and if it gives the Cherokee citizen any prior right to such land in case the present suit

pending should be decided against the Delawares. You ask also for copies of such papers as are filed by such claimants, and copies of papers that have been issued by the Commission upon such application.

In reply you are advised that in permitting a Cherokee by blood to apply for land embraced in the Delaware segregation, the testimony of the applicant, touching the land, was taken, but in no case was such application treated as the regular applications which are made for lands not embraced in said segregation, and action was suspended thereon to await the final determination of the Delaware suit, the Cherokee making the application then and there being required to accept notice to that effect.

For your information there is inclosed a blank copy of such notice.

No further action after this has ever been taken by the Commission on applications made for lands in the Delaware segregation, but as stated above, are simply held and action suspended thereon until final determination of the suit which is now pending.

Respectfully,

TAMS BIXBY, *Chairman.*

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EXHIBIT 68.

This is formal notice to you by the Commission that the \_\_\_\_\_ is embraced in the segregation which has been made to the Delaware Indians who are members of the Cherokee Nation under the provisions of section 23 of the act of Congress approved July 1, 1902, and that you will not be allowed this land for \_\_\_\_\_ until the suit of the Delaware Indians against the Cherokee Nation, now pending, has been determined, and that a final allotment of this land to \_\_\_\_\_ will not be made at this time.

I accept this service of notice.

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EXHIBIT 69.

DEPARTMENT OF THE INTERIOR,  
COMMISSION TO THE FIVE CIVILIZED TRIBES,  
*Muscooge, Ind. T., November 11, 1903.*

RICHARD C. ADAMS, Esq.,  
*Bond Building, Washington, D. C.*

DEAR SIR: Receipt is acknowledged of your letter of October 12, in which you ask for a complete record of each case wherein Cherokee have applied for land in the Delaware segregation.

In reply you are advised that this office is informed that Mr. Chase, of Washington, D. C., one of your representatives, procured copies of these applications some weeks ago at the land office at Tahlequah. If the information procured by him is not sufficient, if you will kindly let us know in what way it is defective or incomplete, we will try and make it as complete as our records show.

Respectfully,

TAMS BIXBY, *Chairman.*

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EXHIBIT 70.

*A brief history of the Delaware Indians.*

INTRODUCTORY NOTE.

No nation or tribe of Indians, we may safely assume, has engaged the attention of the whites in this country to the same extent as the Delawares, the "grandfather" of the Algonquin tribes.

The Delawares have done less to impede and certainly more to aid the progress of the white man's work in settling and developing the North American continent than any other Indians.

They were among the first people with whom the English, the Dutch, and the Swedes came in contact on the Atlantic coast three centuries or more ago.

Their friendly aid and hospitality, extended promptly to the newcomers from the Old World, furnished the first earnest good will and brotherly kindness that the red man felt for these white explorers—a brotherly kindness which, had it been reciprocated and cultivated, would have diminished very greatly the hardships involved in settling and peopling this vast new territory—would have saved a race of good, strong, kind, and honest people from cruel, premature extinction, and would have avoided the one bad blot upon the page of the white man's history in this country.

The kindness felt and shown by the Delawares toward the white man at the beginning of their intercourse has continued throughout these three hundred years or more, as is amply shown in the numerous historical accounts of the conduct of the Delawares in peace and in war, both before and since the formation of the Government of the United States.

It is of this Indian people that I venture now to offer a brief history covering the early legendary period, tracing their course from the time when as a mighty nation embracing many bands they owned and occupied that vast, magnificent territory extending along the Atlantic coast from Virginia to Massachusetts, and following them in their successive migrations and removals through western Pennsylvania, Ohio, Indiana, Missouri, Kansas, and finally dealing with them in their ultimate home within the Cherokee Nation in the Indian Territory.

So much has been written of the Delaware Indians in early times that a full and comprehensive history, gathered from the many sources in which it has been recorded, would necessarily be a large and exhaustive work. At this time, however, my effort is only to produce a brief and accurate sketch of the history of my people, at the time when the last bond uniting them in their tribal relations is being severed by the action of the General Government in segregating their lands, allotting them in severalty, and thereby rendering them in all respects citizens of the United States.

To the memory of my ancestor, Captain White Eyes, whose ambition it was that the Delawares and their confederated bands should be consolidated and become the fourteenth State in the Union, and to my Delaware brethren in the United States this sketch is affectionately dedicated.

R. C. A.

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#### CHAPTER I.

From the traditions of the Delaware Indians, we are led to believe that they originally came from some place in the far northwest.<sup>1</sup>

They call themselves "Lenni Lenape," or original people, or men that are men. Most tribes call them "Grandfather," recognizing them as an older race, or the trunk race from which other tribes sprung.<sup>2</sup> Heckewelder stated that Lenni means original, pure, and that Lenape signifies people; hence, he interpreted the name as "original people."

The tribe was divided into three principal clans—the "Turtle," which is the oldest; the "Wolf," and the "Turkey." Each clan was entitled to a chief and a war chief. Over all the clans was a sachem (sah-kee-mun), who came from the Turtle clan. His office was hereditary.

The Delaware Indians did not depend solely upon the chase for subsistence, for they grew large fields of corn or maize, squash, beans, sweet potatoes, and tobacco. They manufactured a kind of pottery, dressed deerskins, and made beads or wampum, feather mantles and other ornaments, and used considerable native copper, which they hammered into ornaments or used for arrowheads and pipes. They also made stone pipes, bows, and arrowheads. The corn or maize was broken up in stone or wooden mortars, with stone or wooden pestles. Their implements of war were war clubs, tomahawks, bows and arrows, scalping knives, and spears. They often used a shield of thick, dried hide for defense. They used the bow and arrow and spear for killing fish and game. They caught fish with fishhooks made of bone and dried claws of birds, and also used brush nets.

They made use of paints and dyes, which they derived from both mineral and vegetable realms, to decorate themselves when going to war, or for picture writing, which was their means of keeping records of historical events or of communicating with each other.

They had their native priests or medicine men, and of those there were two classes—one who devoted themselves to divination and the other to healing of the sick. The medicine men would interpret dreams of others and of themselves, and claimed the power to dream truthfully of the future and of the absent. In their visions their guardian spirits visited them; they became, as they called it, "all light," and they

"could see through men and know the thoughts of their hearts." At such times they were also instructed at what spots the hunters could successfully seek game.

To Heckewelder we are indebted for the following legends of their origin:

"The Leni Lenape (according to the tradition handed down to them by their ancestors) resided many hundred years ago in a very distant country in the western part of the American continent.<sup>3</sup> For some reason, which I do not find accounted for, they determined on migrating to the eastward, and accordingly set out together in a body. After a very long journey, and many nights' encampments by the way, they at length arrived on the Namoesi Sipi, where they fell in with the Mengwe, who had likewise emigrated from a distant country, and had struck upon this river somewhat higher up. Their object was the same with that of the Delawares; they were proceeding on to the eastward, until they should find a country that pleased them. The spies which the Lenape had sent forward for the purpose of reconnoitering, had long before their arrival discovered that the country east of the Mississippi was inhabited by a very powerful nation, who had many large towns built on the great river flowing through their land. Those people (as I was told) called themselves Talligeon or Talligewi. Col. John Gibson, however, a gentleman who has a thorough knowledge of the Indians, and speaks several languages, is of opinion that they were not called Talligewi, but Alligewi. \* \* \*

"Many wonderful things are told of this famous people. They are said to have been remarkably tall and stout, and there is a tradition that there were giants among them, people of a much larger size than the tallest of the Lenape. It is related that they had built for themselves regular fortifications or entrenchments, from whence they would sally out, but were generally repulsed. \* \* \*

"When the Lenapes arrived on the banks of the Mississippi, they sent a message to the Alligewi to request permission to settle themselves in their neighborhood. This was refused them, but they obtained leave to pass through the country and seek a settlement farther to the eastward. They accordingly began to cross the Namoesi Sipi, when the Alligewi, seeing that their numbers were so very great, and in fact they consisted of many thousand, made a furious attack on those who had crossed, threatening them all with destruction if they dared to persist in coming over to their side of the river. \* \* \*

"Having united their forces, the Lenapes and Mengwe declared war against the Alligewi, and great battles were fought, in which many warriors fell on both sides. The enemy fortified their large towns and erected fortifications, especially on large rivers near lakes, where they were successfully attacked and sometimes stormed by the allies. An engagement took place in which hundreds fell, who were afterwards buried in holes or laid together in heaps and covered over with earth. No quarter was given, so that the Alligewi, at last, finding that their destruction was inevitable if they persisted in their obstinacy, abandoned the country to the conquerors, and fled down the Mississippi River, from whence they never returned. \* \* \*

"A French writer, Henri Ternaux Campans, says that the greater loss of people between the Mengwe and the Lenape fell on the latter, because the former had taken care, during the several battles that culminated in the final victory, not to appear until the moment of pillage arrived.

"In the end the conquerors divided the country between themselves: the Mengwe made choice of the lands in the vicinity of the Great Lakes and on their tributary streams, and the Lenape took possession of the country to the south. For a long period of time—some say many hundred years—the two nations resided peaceably in this country, and increased very fast: some of their most enterprising huntsmen and warriors crossed the great swamps, and falling on streams running to the eastward, followed them down to the great Bay River, thence into the bay itself, which we call Chesapeake. As they pursued their travels, partly by land and partly by water, sometimes near and at other times on the great Salt-water Lake, as they call the sea, they discovered the great river, which we call the Delaware, and thence exploring still eastward, the Scheyichbi country, now named New Jersey, they arrived at another great stream, that which we call the Hudson or North River. \* \* \*

"At last they settled on the four great rivers (which we call the Delaware, Hudson, Susquehanna, Potomac), making the Delaware, to which they gave the name of 'Lenape-wihituck' (the river or stream of the Lenape), the center of their possessions.

"They say, however, that the whole of their nation did not reach this country: that many remained behind, in order to aid and assist that great body of people which had not crossed the Namoesi Sipi, but had retreated into the interior of the country on the other side. \* \* \*

"Their nation finally became divided into three separate bodies. The larger body, which they suppose to have been one-half the whole, was settled on the Atlantic

and the other half was again divided into two parts, one of which, the strongest, as they suppose, remained beyond the Mississippi, and the remainder where they left them, on this side of that river.

“Those of the Delawares who fixed their abodes on the shores of the Atlantic divided themselves into three tribes. Two of them, distinguished by the names of the Turtle and the Turkey, the former calling themselves Unami, and the other Unalachtigo, chose those grounds to settle on which lay nearest to the sea, between the coast and the high mountains. As they multiplied, their settlements extended from the Mohicanituck (river of the Mohicans, which we call the North or Hudson River) to the Potomac. \* \* \*

“The third tribe, the Wolf, commonly called the Minsi, which we have corrupted into Monseys, had chosen to live back of the other two. \* \* \* They extended their settlements from the Minisink, a place named after them, where they had their council seat and fire, quite up to the Hudson on the east, and to the west or southward far beyond the Susquehanna.

“From the above three tribes, the Unami, Unalichtigo, and the Minsi, had, in the course of time, sprung many others. \* \* \* the Mahicanni, or Mohicans, who spread themselves over all that country which now composes the Eastern States, \* \* \* and the Nanticokes, who proceeded far to the South, in Maryland and Virginia.”

Benjamin Smith Barton, in his book published in 1798, entitled, *New Views of the Origin of the Tribes and Nations of America*, says:

“Of all the Indian nations which formerly inhabited, and do still inhabit, the countries of America, from the State of Massachusetts down to the Mississippi, and between the river Ohio and the lakes of Canada, none but the Delawares and the Five Nations had the right to call a general council. The Wyandots and Hurons might call them occasionally.

“The Delawares appear to have been formerly the superiors of the other nations of North America that are comprehended within the limits which I have mentioned. Their traditional history, which is still extant, proves this assertion. But by the cunning of the Five Nations, who are perhaps the greatest politicians of all the North American Indians, they were allured into a war with the enemies of the Five Nations and finally were conquered.

“After this stroke of policy, for the meanness of policy is not confined to civilized nations, the Delawares were told that their legs being now cut off they must wear the petticoat, become women, turn their hands to the raising of corn, etc., and leave the higher business of warring to the conquerors.”

“However, in the year 1776 or 1777, when the Five Nations were using all their endeavors to bring all the Indian nations into the war against the United States, a Delaware chief, relying upon the faith and promises of our infant States, had the resolution to say to some of the chiefs of the Five Nations then assembled at Fort Pitt ‘that he well remembered that they had formerly cut off his legs and made a woman of him by putting a petticoat upon him and by other degrading marks, but that now his legs were grown again; that he had thrown away the petticoat and had put on the breechelout again,’ adding that ‘the land beyond the river Alleghany was his property.’

“From this period the Delawares have again assumed considerable authority among the American tribes. The Five Nations, indeed, aspire to be the sovereigns of all other tribes, and for many years past have assumed the right of making war and of concluding peace, according as it best answered their purpose. They have also assumed the right of selling land to the whites. They wish to be looked upon by the other nations as their guardians, which it must be allowed they were for many years. But of late years matters have taken a different turn. The western nations have at length discovered the intentions of the artful confederacy and now go so far as to threaten them with destruction if they do not unite with them or fulfill the condition of the league.

“The Delawares are at present at the head of this league, and, relying upon the fidelity of the nations who are combined with them, now give, in some measure, law to the Five Nations.

“The Wyandots, being the guarantees of the Delawares, are under obligation to assist them when they shall become involved in war, and especially when they shall be in danger of losing their lands, for the Delawares have now no lands but what have been given to them by the Wyandots, who at the time the gift was made engaged to protect the former in the property of them against any invader. The league of association between the Delawares and Wyandots was formed in the year 1751.

“The Chippewas, who are the second tribe mentioned in my list, evidently speak a dialect of the Delaware language. Of this nation I do not think it necessary to say

anything further, as the reader will obtain ample information concerning them in Carver's Travels, a work which is in the hands of almost every person who is the least studious of the Indian affairs of this country. I do not know the meaning of the word Chippewa or Chippeway. The Chippewas formed a part of the hostile Indians who defeated General St. Clair on the 4th of November, 1791. We have cause to remember them. \* \* \*

"The vast spread of the language of the Delawares in North America is also evidenced by the Indian names of many of the waters, the mountains, and the valleys of the country. It is a fact that from the Atlantic to the Mississippi a large proportion of the rivers and creeks, in particular, are still best known by the names (or rather corruptions of the names) imposed upon them by the Delawares and their brethren. I shall fully illustrate this assertion in a map which is intended to be prefixed to my large work relative to this country. This is not the place to do it at length. I may observe, however, that Massachusetts, Connecticut, Monongahela, Allegheny, Muskingum, Savanna, and Mississippi itself, are all Delaware words. I believe the same may be said of the Missouri. Ohio and Susquehanna are not Delaware words. \* \* \*

"But few of the Delaware nations have been stationary, and wherever we push our inquiries we discover traces of these nations and their languages. A nation called the Monsonies, and another called the Mattasins are said to reside in the vicinity of Hudson Bay. Both of these nations are doubtless Delaware. Monsonies are the nation, or a part of them, whom we call Monsees; and the word Mattasin signifies in the language of the Monsees, a tobacco pipe; or, perhaps, rather the bowl of the pipe. In a letter to me dated February 26 of the present year, Mr. Heckewelder says, 'Last summer, while at Muskingum, an Indian who visited us told us that some of the nation (Delawares) which had traveled not long since far up the Missouri River met with real Delawares, who spoke their language.' I believe the Assinipoils, or Assiniboils, who reside beyond Lake Superior, speak a dialect of the Delaware language. The word Assinipoil is certainly a Delaware word. It signifies the standing rock. If, in the progress of future inquiries, it should be discovered that the tribes of the Delaware stock have not been more given to wandering than those of the other races I have mentioned, I am persuaded it will be completely ascertained that the dialects of the Delawares have a much more extensive range in North America than any other."

The Delaware Indians always held a thanksgiving dance during the full moon of each autumn. This dance lasted twelve days and nights, during which time they feasted and thanked the Great Spirit for maintenance and support.<sup>5</sup> At other times of the year they had other kinds of dances—the buffalo dance, the bread dance, the woman dance, the war dance, and other kinds.

The Delaware Indians were nearly always kind to their prisoners. In the "History of the Conspiracy of Pontiac," pages 507 and 508, we find the following:

"The word prisoner, as applied to captives taken by the Indians, is a misnomer, and conveys a wholly false impression of their situation and treatment. When the vengeance of the conquerers is staved, when they have shot, stabbed, burned, or beaten to death enough to satisfy the shades of their departed relatives, they usually treat those who survive their wrath with moderation and humanity, often adopting them to supply the place of lost brothers, husbands, or children, whose names are given to the successors thus substituted in their place. By a formal ceremony the white blood is washed from their veins, and they are regarded thenceforth as members of the tribe, faring equally with the rest in prosperity or adversity, in famine or abundance. When children are adopted in this manner by Indian women they nurture them with the same tenderness and indulgence which they extend, in a remarkable degree, to their own offspring, and such young women as will not marry an Indian husband are treated with a singular forbearance, in which superstition, natural temperament, and a sense of right and justice may all claim a share.

"The captive, unless he excites suspicion by his conduct, or exhibits peculiar contumacy, is left with no other restraint than his own free will. The warrior who captured him or to whom he was assigned in the division of the spoil, sometimes claims, it is true, a certain right of property in him, to the exclusion of others; but this claim is soon forgotten, and seldom exercised to the inconvenience of the captive, who has no other prison than the earth, the air, and the forest. Five hundred miles of wilderness, beset with difficulty and danger, are the sole bars to his escape, should he desire to effect it; but, strange as it may appear, this wish is apt to expire in his heart, and he often remains to the end of his life a contented denizen of the woods."

The Delawares always treated their women with respect and reverence, and even in council their voices were heard, and rarely were they forced to do anything against their wills.<sup>6</sup>

In speaking of their character, it was the opinion of Father La Jume, one of the most devoted of the earlier French missionaries, that, "in point of intellect," the American red man could be placed in a high rank. "The Indian," he said, "I can well compare to some of our own (French) villagers who are left without instruction. I have scarcely seen any person who has come from France to this country who does not acknowledge that the savages have more intellect or capacity than most of our peasantry." The French traveler, Charlevoix, was even more emphatic: "The beauty of their imagination," he says, "equals its vivacity, which appears in all their discourses. They are very quick at repartee, and their harangues are full of shining passages which would have been applauded at Rome or Athens. Their eloquence has a strength, nature, and pathos which no art can give and which Greeks admired in the barbarians."

George Catlin said of the Delawares: "The very sound of this name has carried terror wherever it has been heard in the Indian wilderness; and it has traveled and been known, as well as the people, over a great part of the continent. This tribe originally occupied a great part of the eastern border of Pennsylvania and a great part of the States of New Jersey and Delaware. No other tribe on the continent has been so much moved and jostled about by civilized invasions; and none have retreated so far, or fought their ways so desperately, as they have honorably and bravely contended for every foot of the ground they have passed over. From the banks of the Delaware to the lovely Susquehanna, and my native valley, and to the base of and over the Allegheny Mountains to the Ohio River, to the Illinois and the Mississippi, and at last to the west of the Missouri, they have been moved by treaties after treaties with the Government, who have now assigned to the mere handful of them that are left a tract of land, as has been done a dozen times before, in fee simple, forever.

"In every move the poor fellows have made they have been thrust, against their wills, from the graves of their fathers and their children, and planted as they now are (1845) on the borders of new enemies, where their first occupation has been to take up their weapons in self-defense, and fight for the ground they have been planted on. There is no tribe, perhaps, amongst which greater and more continued exertions have been made for their conversion to Christianity, and that ever since the zealous efforts of the Moravian missionaries who first began with them, nor any, amongst whom those pious and zealous efforts have been squandered more in vain—which has probably been owing to the bad faith with which they have so often and so continually been treated by white people, which has excited prejudices that have stood in the way of their mental improvement.

"This scattered and reduced tribe, which once embraced some 10,000 or 15,000, numbers at this time but 800."

Even after the Delawares had become embittered and corrupted by the gross knavery of the whites (for example, the notorious "long walk") and the debasing influence of alcohol, such an authority as Gen. William H. Harrison could write these words: "A long and intimate knowledge of them (Delawares) in peace and war, as enemies and friends, has left upon my mind the most favorable impression of their character for bravery, generosity, and fidelity to their engagements."

One of the first explorers of the Delawares, Capt. Thomas Young (1634), describes them (the Delawares) as "very well proportioned, well featured, gentle, tractable, and docile."

Of their domestic affections, Mr. Heckewelder, the candid and well-informed historian, writes: "I do not believe that there are any people on earth who are more attached to their relatives and offspring than these Indians (the Delawares) are."

In "An account of the conduct of the Society of Friends toward the Indian tribes," published in London in 1844, I find the following:

"Amidst all the devastating incursions of the Indians in North America it is a remarkable fact that no friend who stood faithful to his principles in the disuse of all weapons of war, the cause of which was generally understood by the Indians, ever suffered molestation from them."

D. G. Brinton, a life-long student of the American Indians, and especially of the Leni Lenape, makes this significant statement:

"The fact that, for more than forty years after the founding of Penn's colony, there was not a single murder committed on a settler by an Indian itself speaks volumes for their self-control and moral character. So far from provoking quarrels with the whites, they extended them friendly aid and comfort."

He instances the following example in support of this view, taken from the records of his own family:

"My ancestor, William Brinton, arrived in the fall of 1684, and with his wife and children immediately took possession of a grant in the unbroken wilderness about

20 miles from Philadelphia. A severe winter set in; their food supply was exhausted, and they would probably have perished but for the assistance of some lodges of Lenape, who provided them with food and shelter. It is, therefore, a debt of gratitude which I owe to this nation to gather its legends, its language, and its memories, so that they—

“ In books recorded  
 “ May, like hoarded  
 “ Household words, no more depart.”

The following is from George Catlin's *North American Indians*:

“ By nature they are discreet and modest, unassuming and inoffensive, and all history (which I could quote to the end of a volume) proves them to have been found friendly and hospitable on all parts of the American Continent. And from what I have seen (which I offer as proof, rather than what I have read) I am willing and proud to add, for the ages who are only to read of these people, my testimony to that which was given by the immortal Columbus, who wrote back to his royal master and mistress, from his first position on the new continent: ‘ I swear to Your Majesties that there is not a better people in the world than these, more affectionate, affable, or mild. They love their neighbors as themselves, and they always speak smilingly.’ ”

#### CHAPTER II.

In the year 1623 a number of emigrants from Holland, under the guidance of Cornelius May, arrived on the Delaware. Having brought with them a stock of merchandise, as well as the means of defense, they sailed up the river as far as Gloucester Point, about 4 miles south of the spot where the city of Philadelphia now stands. At a short distance southeast of this point, on a very commanding position near the mouth of Timber Creek, May landed his forces and built Fort Nassau. May acted as the agent of the “ West India Company,” a Holland company. He was the first European who sailed up the river Delaware. It appears that the concern was not sufficiently profitable to induce the company to support it. Its object was trade, not colonization. In ten years after its establishment De Vries found it in the possession of the Indians.

Acrelius affirms that when the Swedes first arrived (in 1638) “ the Dutch had no establishment on the Delaware.”

Proud says that “ the commodious situation of New York for the sea and trade induced the most of them (the Dutch) who were settled on the Delaware soon after to quit it, and fix their settlements on both sides of the North River, before any of the Swedes came to America.” Campanius says “ the Dutch also claimed a right to it (the country) because they had visited it before the Swedes and had erected three forts there, which had, however, been utterly destroyed by the Indians, and all who were therein murdered or driven away, so that they had abandoned it entirely when the Swedes came.”

The foregoing statements are chiefly based upon a work published in 1846 by Benjamin Ferris, an apparently impartial and well-informed historian of the events of the early period of which he writes. There is no doubt but that the colony attempted to be planted by De Vries came to a melancholy end by reason of the indiscretions and injustices practiced by those left in charge of his settlement by De Vries during an absence in Europe. The members of the settlement were all destroyed.

David Peterson De Vries was a just man, and, though he had greatly suffered in his property by the acts of the Indians, abhorred the cruelty practiced against them, and in the book published by him expresses his detestation of the inhumanity of the whites toward the aborigines. He has placed upon record in his book the following case of barbarity.

It was perpetrated by the Dutch at Pavonia, in New Jersey, nearly opposite to the city of New York, and also on the Raritan:

“ It was in the night,” says De Vries, “ of the 25th and 26th of February, 1643, that they executed these fine deeds. I remained that night at the governor's, and took a seat in the kitchen, near the fire. At midnight I heard loud shrieks. I went out to the parapets of the fort and looked out toward Pavonia. I saw nothing but the flash of the guns and heard nothing more of the yells and clamour of the Indians, who were butchered during their sleep. About day the soldiers returned to the fort, having murdered 80 Indians. And this was the feat worthy of the heroes of old Rome, to massacre a parcel of Indians in their sleep; to take the children from the



breasts of their mothers, to butcher them in the presence of their parents, and throw their mangled bodies into the fire or water. Other sucklings had been fastened (by their mothers) to little boards (according to the Indian manner of nursing very young infants), and in this position they were cut to pieces. Some were thrown into the river, and when the parents rushed in to save them, the soldiers prevented their landing, and let the parents and children go down together. Children 5 or 6 years' old were murdered, and some aged, decrepit men cut to pieces. Those who escaped these horrors and found shelter in bushes and reeds, making in the morning their appearance to beg some food or to warm themselves, were killed in cold blood, or thrown into the fire or water; some came running to us in the country, having their hands cut off; some had their arms and legs cut off; some who had their legs cut off were supporting their entrails with their arms; others were mangled in other horrid ways, in part too shocking to be conceived. After this exploit the soldiers were rewarded for their services, and Director Kieft thanked them by taking them by the hand and congratulating them."<sup>7</sup>

From the time of Hudson's discoveries in 1609 until 1637, a period of twenty-eight years, no successful effort to plant a colony on the Delaware had been made. The first attempt under May had failed by the voluntary removal of the emigrants to the North River and its vicinity. The second attempt, under De Vries, in 1631, failed by the indiscretion of his agent and the murder of his colonists. From the failure of De Vries until the arrival of the Swedes in 1638 no effort was made to plant a colony or form a settlement on the shores of the Delaware.

William Usselinx, a distinguished merchant of Stockholm, was the first to propose to the Swedish Government a scheme for planting a colony in America. In the year 1624 he proposed to the Swedish monarch, Gustavus Adolphus, a plan for the organization of a trading company to extend its operations to Asia, Africa, America, and Tella Magellanica. His plan and contract were translated into the Swedish language. The King recommended it to the states, and an edict dated at Stockholm, July 2, 1626, was issued by royal authority, in which people of all ranks were invited to encourage the project. The plan was supported by the wealthy notables of the country. Ships and all necessaries were provided. The work was ripe for execution, when the German war, and afterwards the king's death, prevented it, and rendered the fair prospect fruitless. Campanius says, "It was in the reign of Gustavus that it was first visited and settled by the Swedes." It is owing to the preservation among the Dutch records at Albany of an official protest issued by Kieft, the governor of New Amsterdam, that we do certainly know the Swedes were here in the spring of 1638. Peter Minnet conducted to our shores the first Swedish colony. It is to be assumed that the building of a fort was their first undertaking after their landing.<sup>8</sup>

The Dutch undoubtedly preceded the Swedes by a temporary occupancy of the territory comprising New Sweden; but they came not as cultivators of the soil, but for trade merely with the natives, not as hom-seekers with their families. They built forts as places of security for themselves and their merchandise and then abandoned them and the country and withdrew to New Amsterdam, and only revived and reasserted their sovereignty after the frugal and industrious Swede and his family had by just, fair, and humane treatment propitiated the Indian, and secured his gratitude and friendship, and only after the Swede had proven the capability of the country for permanent settlement. Then the Dutch came with fleets and soldiers and proclamations of superior rights, and by threats and force of arms compelled the thrifty but peaceful Swede to surrender. I am unable to determine from the confused history of the period upon what grounds they asserted their claims of right, not by discovery certainly, nor by conquest, not by occupancy, for they had abandoned the country for years. The actual possession had been in the Indians for ages and ages, and was still in the Indians themselves, excepting so much of the soil as they had by treaty solemnly ceded to the just-dealing Swede.

I can not read the histories of the conduct of the French, English, and Dutch during these struggles for supremacy, without the slightest regard for the rights of the natives, without amazement at their supreme selfishness.

From a History of the State of Delaware, by Francis Vincent, published in 1870, we find an account of the council held by the Delaware Indians about 1645, which was reported by Campanius. I am of the opinion that if we had the actual account of the council and the talks that were made, it would appear entirely different from what is recorded here, but for the benefit of the readers, I will give it as recorded by Campanius:

Although the following council of Indians might have been more appropriately introduced under the events of 1645, yet we relate them here, as illustrating the character of the Indians. As regards the place where the council was held, history

does not inform us. Printz was governor of what is now our State at the time. It was called by the head sachem, Matta Horn,<sup>6</sup> to know whether the then inhabitants of Delaware, principally Swedes (though there were some Dutch) should be destroyed. The sachem calls his son, Agga Horn, and a dialogue occurs between them, as follows:

"Father Matta Horn: Where are the Swedes and the Dutch?"

"Son Agga Horn: Some of them are at Fort Christina, and some at New Gottenberg.

"Father: What do the the Swedes and the Dutch say now?"

"Son: They say, Why are the Indians so angry with us? Why do they say they will kill all of us Swedes, and root us out of the country? The Swedes are very good. They come in large, fast sailing ships, with all sorts of fine things from Swede's country, or old Sweden.

"Father: Go round to the other chiefs and to the common men and hear what they say.

"Son: They say you Indians and we (Swedes and Dutch and English) are in friendship with each other. We are good men. Come to us. We have a great deal of cloth, kettles, gunpowder, guns, and all that you may want to buy.

"Father: I understand. What do you say about this, Agga Horn, my son?"

"Son: I say that I think it best not to fall upon them, because the Swedes are skillful warriors.

"Father: My son, you must go about here and there, to our good friends, the officers and common men, and engage them to come immediately here to me that we may consult together as to what we shall do.

"Son: It is well; I will go.

"Father: Do that, but don't be long away."

The son comes again and salutes his father.

"Son: My father, Matta Horn (that is), good-by, father, Matta Horn.

"Father: Yes; here I am, my dear son, Agga Horn.

"Son: Father, Matta Horn, I have done what you ordered me.

"Father: Well, my son, what answered the officers?"

"Son: They answered that they would come here to us the day after to-morrow.

"Father: You, my son Agga Horn, may go with the men to shoot some deer in the woods. Perhaps the good gentlemen may be hungry when they come.

"Son: I understand that well; I will go immediately out hunting."

After being hunting, he returns with venison.

"Father: Have you been hunting?"

"Son: Yes; I have.

"Father: What have you done?"

"Son: We have killed two elks, and as many deer as will be wanted.

"Father: Have you shot no turkeys?"

"Son: I shall have also twelve turkeys.

"Father: Enough, enough."

The people are now assembled in council.

"Sachem: Are you here, good friends?"

"Warriors: Yes; we are.

"Sachem: That is well, you are welcome. Sit down and rest.

"Warriors: With pleasure, for we are much tired.

"Sachem: Are you also hungry?"

"Warriors: Yes; maybe we are hungry.

"Sachem: I know you have gone a great way, so you must be very hungry. We shall have meat presently.

"Warriors: That will do for us.

"Sachem: Here, you have to eat. Eat all, ye good friends.

"Warriors: Yes; we will do our best. Give us meat.

"Sachem: Do you also want drink?"

"Warriors: Yes; give us drink. This is sweet and good water. We are now well satisfied. Thanks. Thanks.

"Sachem's speech to the warriors: My good friends, all of you, don't take it amis, that my son has called you to this place. The Swedes dwell here upon our lands and they have many fortresses and houses for their habitation. But they have no goods to sell to us. We can find nothing in their stores that we want and we can not trade with them. The question is whether we shall go out and kill all the Swedes and destroy them altogether or whether we shall suffer them to remain?"

<sup>6</sup>This sachem owned the territory on which the city of Wilmington is built. The grounds on which Fort Christina was built was purchased from him, and on that ground was his wigwam. He is sometimes called Matta Horn.

Therefore, I am glad that you came here, that we may consult together on this subject. You chiefs and warriors, what advice do you give? What shall we do with the Swedes? They have no cloth—red, blue, or brown. They have no kettles, no brass, no lead, no guns, no powder. They have nothing to sell us, but the English and Dutch have got all sorts of merchandise.

“Some of the chiefs answer: We are for the Swedes; we have nothing against them.

“Another chief answers: It would be well to kill all the Swedes, for they have nothing in their stores for which we can trade with them.

“The common warriors answer.

“A common warrior says: Wherefore should we kill all the Swedes and root them out of the country? They are in friendship with us. We have no complaint to make of them. Presently they will bring here a large ship full of all sorts of good things.

“Others answer: You talk well; we common warriors agree with you. Then we shall not kill all the Swedes and root them out of the country.

“Others reply: No; by no means, for the Swedes are good enough, and they will shortly have here a large ship full of all sorts of goods.

“The king's decision: Right so. We, native Indians, will love the Swedes and the Swedes shall be our good friends. We and the Swedes, and the Dutch, shall always trade with each other. We shall not make war upon them and destroy them. This is fixed and certain. Take care to observe it.

“The whole meeting answers:

“We all agree it shall be fixed and certain.

“Now, we are going home.

“Yes; farewell.

“Whither are you going?”

“To our plantations.

“I understand.

“The maize is now fully ripe.

“Yes; it is certainly ripe.

“Now then, fare ye well.”

The most pleasant memories of the Delawares—of their early dealings with the whites—is that of the treaty made with William Penn under the spreading elm tree at Shackamaxon, on the banks of the Delaware River in 1682. Sacred to the memory of the white men, as well as to that of the Delawares, has been the eventual treaty resulting from that transaction. In the rotunda of the Capitol at Washington can be seen the historical fresco recalling that event.

When the time arrived at which William Penn and the Indians had agreed to meet personally to confirm the treaty of peace and the purchase of the land which his commissioners had bargained for and the transaction was to be publicly ratified, Penn came, accompanied by his friends of both sexes, to the place where Philadelphia now stands. On his arrival he found the chiefs and their people all assembled there. They were seen as far as the eye could reach—up the river, down the river, and in the forest far beyond—and looked frightful, both on account of their numbers and their arms. The Quakers were but a handful in comparison with the Indians, and were unarmed, but confidence in the justice of their cause prevented dismay and terror from seizing them. William Penn appeared in his usual clothes, and was distinguished only by wearing a sky-blue sash of silk network around his waist. He had a roll of parchment containing a confirmation of the treaty of purchase and amity in his hands. One of the sachems, who was the head chief of them, put upon his own head a kind of chaplet, in which appeared a small horn. This, as among the primitive nations and according to scriptural language, was an emblem of kingly power, and whenever the chief who had the right to wear it put it on it was understood that the place was made sacred and the persons of all present inviolable. Upon putting on this horn, the Indians threw down their bows and arrows and seated themselves around the chiefs, in the form of a half moon, upon the ground. The chief sachem then announced to William Penn, by means of an interpreter, that the Indians were ready to hear him. The treaty was ratified with all due solemnity, and is known to this day as the treaty that never was sworn to and never was broken.

Many years after this, or about 1755, when Governor Morris was about to declare war with the Delawares and Shawnee, the “Friends” offered cheerfully to contribute by a voluntary grant a much larger portion of their estates and the largest tax that a war could be expected to require toward the obtaining of peace in the same manner as the unhappy experience of the most martial of the neighboring colonies had, after long and bloody wars, proved it must at last, if ever, be obtained, i. e., by just purchase of lands, protection from frauds, and considerate kindness.

Their personal efforts and influence with chiefs and with the governor, their wise counsel, and generosity did much toward effecting pacification of Indian tribes of Pennsylvania and Ohio, and the consequential withdrawal of the French from the Ohio.

From "An inquiry into the causes of the alienation of the Delaware and Shawnee Indians from the British interests and into the measures taken for recovering their friendship," published in London, 1759, we find:

"Upon information being made to the governor, in April, 1728, by one Letort, an Indian trader, that Manawkyhichon, a Delaware chief, to revenge the death of Wequeals<sup>9</sup> (or Weekwelev), who had been hanged in the Jerseys the year before, was endeavoring to engage the Miamis, or Tweektwees, to make war on the English, and that the Five Nations had joined with him, it was thought advisable to inquire further into this matter. In the meantime it was judged proper that the governor should take some notice of the Indians on Susquehannah and Delaware, those people generally thinking themselves slighted, as no treaty had been held with them for some time.

"In consequence of this the governor, as soon as he received advice that Captain Civility, chief of the Conestogo Indians, was returned with his people from hunting, dispatched an express to acquaint those Indians that he would meet them about the 23d of May at Conestogo, where he desired that the chiefs of all the Indians might be present, and that Captain Civility would dispatch messengers to Sassoonan, Opekasset, and Manawkyhichon, chiefs of the Delawares, who live up the river Susquehannah, to be there. At the time appointed the governor went and met the chiefs of the Conestogoes, the Delaware Indians on Brandywine, the Canawese, and the Shawanese Indians. At this conference the governor put them in mind of the league of friendship which had long subsisted between them and this government, and refreshes their memory by repeating the principal heads of it. After this he informs them that he heard the Tweektwees were coming as enemies against this country, which he thought must be false, as he had never hurt the Tweektwees. He next acquaints them of a late skirmish between eleven foreign Indians and about twenty of his people at a place called Mahanatawny; that, upon receiving the news, he immediately repaired to the place, but found the Indians gone; that, upon his return, he was informed of two or three furious men having killed three friendly Indians and hurt two girls, which grieved him much; that thereupon he had the murderers apprehended and put in prison, and that they should be tried and punished as if they had killed white people. He likewise lets them know that, about eight months ago, an Englishman was killed by some Indians at the house of John Burt in Snake-Town, and desires that they would apprehend the murderers and bring them to justice.

"The Indians, in their answer, let the governor know they were well satisfied with what he had said, and assure him that what had happened at John Burt's house was not done by them, but by one of the Minysinks, another nation, for which reason they can say nothing to it.

"As the messages which Civility sent to the Delaware chiefs, who lived on Susquehannah, did not reach them soon enough for them to attend the treaty at Conestogo, the governor desired them to meet him at Philadelphia. Accordingly, a few days after, Sassoonan, king of the Delawares, with Opekasset and a few more of his principal men, came to Philadelphia, where the governor gave them a hearty welcome, renewed the treaties of friendship which Mr. Penn had made with them, acquainted them of the skirmish that had happened betwixt his people and a party of Shawanese who came armed and painted for war and were taken for strange Indians; informed them of the unhappy accident that had followed and of his causing the murderers to be apprehended and put in gaol to be tried and punished as if they had killed one of His Majesty's subjects; and, lastly, he condoled with the friends of the murdered and comforted them after the Indian manner.

"In answer to this Sassoonan thanks the governor for the speech he had made, declares himself well pleased with what the governor said in relation to the accident that had happened to the Indians, and desired that no misunderstanding might arise on that account, and concluded with saying that in two months he designed to return and speak more fully.

"But being told that if he had anything at all upon his mind it was now a proper time to speak it, that it might be heard by all that company, addressing himself to Mr. James Logan,<sup>10</sup> he proceeded to say, 'That he was grown old, and was troubled to see the Christians settle on lands that the Indians had never been paid for; they had settled on his lands, for which he had never received anything; that he is now an old man and must soon die; that his children may wonder to see all their father's lands gone from them without his receiving anything for them; that the Christians

now make their settlements very near them, and they shall have no place of their own left to live on; that this may occasion a difference between their children and us hereafter; and he would willingly prevent any misunderstanding that may happen.'

'As this speech was addressed to Mr. Logan, he, with the leave of the governor, answered: 'That he was no otherwise concerned in the lands of this province than as he was entrusted, with other commissioners, by the proprietor to manage his affairs of property in his absence; that William Penn had made it a rule never to suffer any lands to be settled by his people till they were first purchased of the Indians; that his commissioners had followed the same rule, and how little reason there was for any complaint against him or the commissioners he would now make appear.'

'He said, 'That Sassoonan, who is now present, with divers others of the Indian chiefs, about ten years since, having a notion that they had not been fully paid for their lands, came to Philadelphia to demand what was due to them; that the business was heard in council, and he then produced to those Indians a great number of deeds, by which their ancestors had fully conveyed and were as fully paid for all their lands from Duck Creek to near the Forks of Delaware, and that the Indians were then entirely satisfied with what had been shown to them; and the commissioners, to put an end to all further claims or demands of that kind, in consideration of their journey and trouble, made them a present, in the proprietor's name and behalf, upon which they agreed to sign an absolute release for all those lands and of all demands whatsoever upon account of the said purchase.' And exhibiting the said instrument of release he desired it might be read, which was done in these words:

'We, Sassoonan, king of the Delaware Indians, and Pokenais, Metashiechay, Aiyamaikan, Pepawmaman, Ghettypeceman, and Opekasset, chiefs of the said Indians, do acknowledge that we have seen and heard divers deeds of sale read unto us, under the hands and seals of the former kings and chiefs of the Delaware Indians, our ancestors and predecessors, who were owners of lands between Delaware and Susquehannah rivers; by which deeds they have granted and conveyed unto William Penn, proprietor and governor in chief of the province of Pennsylvania, and to his heirs and assigns, all and singular their lands, islands, woods, and waters, situate between the said two rivers of Delaware and Susquehannah, and had received full satisfaction for the same. And we do further acknowledge that we are fully content and satisfied with the said grant. And whereas the commissioners, or agents of the said William Penn, have been pleased, upon our visit to this government, to bestow on us as a free gift, in the name of the said William Penn, these following goods, viz.<sup>11</sup> 2 gums, 6 strowd-water coats, 6 blankets, 6 Dussel match-coats, and four kettles, we, therefore, in gratitude for the said presents, as well in consideration of the several grants made by our ancestors and predecessors, as of the said several goods hereinbefore mentioned, the receipt whereof we do hereby acknowledge, do, by these presents, for us, our heirs and successors, grant, remise, release, and forever quit-claim unto the said William Penn, his heirs and assigns, all the said lands situate between the said two rivers of Delaware and Susquehannah, from Duck Creek to the mountains on this side of Lechaity, and all our estate, right, title, interest, property, claim, and demand whatsoever, in and to the same, or any part thereof; so that neither we, nor any of us, nor any person or persons, in the behalf of any of us, shall, or may hereafter, lay any claim to any of the said lands, or in anywise molest the said William Penn, his heirs or assigns, or any person claiming by, from, or under him, them, or any of them, in the peaceable and quiet enjoyment of the same.

'In witness whereof we have hereunto set our hands and seals, at Philadelphia, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighteen.

'SASSOONAN (his mark x).

'POKEHAIS (his mark x).

'METASHEECHAY (his mark x).

'AIYAMAIKAN (his mark x).

'GHETTYPECEMAN (his mark x).

'OPEKASSET (his mark x).

'PEPAWMAMAN (his mark x).

'Sealed and delivered (by all but Pokenais and Pepawmaman, who were absent) in the presence of W. Keith, Robert Asheton, Samuel Preston, Anthony Palmer, Jonathan Dickinson, Indian Sam, Son to Essepenaick, Indian Peter, Pokenais's nephew or Aweykoman, Kachagnesconk or Tobey (his mark), Tussoghcanan (his mark), Neeshalappih or Andrew (his mark). Sealed and delivered by Pokenais and Pepawmaman in the presence of James Logan, Robert Asheton, Clement Plumsted, David Evans, Nedawayaw or Oliver, Neeshalappi or Andrew.'

"This deed Sassoonan and Opekasset both acknowledged to be true, and that they had been paid for all the lands therein mentioned; but Sassoonan said the lands beyond these bounds have never been paid for; that these reached no farther than a few miles beyond Oley, but that their lands on Tulpyhockin were seated by the Christians.

"Mr. Logan answered that he understood at the time that deed was drawn, and ever since, that Lechay hills, or mountains, stretched away from a little below Lechay, or the Forks of Delaware, to those hills on Susquehannah that lie about 10 miles above Pexton. Mr. Farmer said, those hills passed from Lechay a few miles above Oley and reached no farther, and that Tulpyhockin lands lay beyond them.

"Mr. Logan proceeded to say, that whether those lands of Tulpyhockin were within or without the bounds mentioned in the deed, he well knew that the Indians, some few years since, were seated on them, and that he, with the other commissioners, would never consent that any settlement should be made on lands where the Indians were seated; that these lands were settled wholly against their minds and even without their knowledge.

"After this, Mr. Logan, by a petition presented to Governor Keith by the Dutch settled at Tulpyhockin, goes on to prove, that merely by the authority of Governor Keith, 'Those foreigners (namely, the Dutch) had been encouraged to invade these lands (at Tulpyhockin) to the manifest injury of the proprietor and to the great abuse of the Indians, who, at that very time, were seated there, and had their corn destroyed by those people's creatures.' Then applying to the Indians, 'He desired that, though these people had seated themselves on the Tulpyhockin lands without the commissioners' leave or consent, yet that they would not offer them any violence, or injure them, but wait till such time as that matter could be adjusted.'

"As the governor had examined Civility and the Conestogo (Delaware) Indians about the murder that was committed at John Burt's, so likewise he inquired of these whether they had not heard of that matter and whether the Indians who committed the murder belonged to them. They said they had heard of it, but it was not done by any of theirs, but by some of the Minissink Indians. The governor then asked them where those of that nation lived, and under what chief. To which they answered, that the Minissinks lived at the Forks of Susquehannah above Mechayomy, and that their king's name was Kindassowa. Thus we see that the Minissinks are quite a distinct nation from the Northern Delawares, of which Sassoonan was king, and consequently no lands of the former could be conveyed away by any grant from the latter.

"As the boundaries between the Indians and the English are so fully ascertained in this treaty, it was thought proper to be thus particular. Everything relating to land affairs are here so clearly stated, the deed of release so full and explicit, that for the future one would imagine no doubts could arise respecting lands; or, should any arise, they might easily be solved. By what is here said, it appears plain that the Delaware Indians can have no pretensions to the lands lying between Susquehannah and Delaware, from Duck Creek to the Lechay Hills below the Forks of Delaware; and that the English at that time had no right or pretensions, under Indian titles, to any lands north of the said Lechay Hills; that all the deeds formerly given by the Indians were carefully examined, and the extent of the lands therein granted was fully ascertained, and all included in the deed of 1718.

"With respect to this writing, it is to be observed that, as the Five Nations claimed no right to the lands on Delaware, they could by the above instrument convey none. They only claimed the lands on Susquehannah, for which reason they say in the above treaty, 'That if Civility at Conestogo should attempt to make a sale of any lands to us or any of our neighbors they must let us know that he hath no power to do so, and that if he does anything of the kind they, the Indians, will utterly disown him.' But nothing like this is said of the Delawares, though it was well known to the Five Nations that the Delawares undertook to sell lands to the English and had but a short time before sold the Tulpyhockin lands. But admitting the Five Nations had a right, yet can it be supposed they would release that right without a consideration? The extent of land taken in by the last instrument of writing is evidently double that described in the first deed, yet for this farther grant there is no consideration paid.

"Indeed the proprietor himself did not seem to think he had a right to these lands without a release from the Delawares. He had, therefore, in 1737, a meeting with Monokykiekan, Lappawinzoe, Tishokunk, and Nutinus, chiefs of the Delaware Indians, at which he prevailed with them to sign a release, by means of which he thought he might gain what he wanted. We have no minutes of that conference or treaty published, but in the preamble of the release then granted it is said 'That Tishokunk and Nutinus had, about three years before, begun a treaty at Durham with

John and Thomas Penn; that from thence another meeting was appointed to be at Pensbury the next spring, to which they repaired with Lappawinzoë and several other of the Delaware Indians; that at this meeting several deeds were shewed to them for several tracts of land which their forefathers had more than fifty years ago sold to William Penn; and, in particular, one deed from Mayker-rikkisho, Sayhoppey, and Taughhaughsey, the chiefs or kings of the northern Indians on Delaware, who, for a certain quantity of goods, had granted to William Penn a tract of land beginning on a line drawn from a certain spruce tree on the river Delaware by a west-northwest course to Neshameny Creek; from thence back into the woods as far as a man could go in a day and a half, and bounded on the west by Neshameny, or the most westerly branch thereof, so far as the said branch doth extend, and from thence by a line ——— to the utmost extent of the day and a half's walk, and from thence ——— to the aforesaid river Delaware, and so down the courses of the river to the first-mentioned spruce tree; and that this appeared to be true by William Biles and Joseph Wood, who, upon their affirmation, did declare that they well remembered the treaty held by the agents of William Penn and those Indians;<sup>a</sup> that some of the old men being then absent they requested of Messrs. John and Thomas Penn more time to consult with their people concerning the same, which request being granted, they, after more than two years since the treaty at Pensbury, were now come to Philadelphia with their chief Monokyhickan and several other old men, and upon a former treaty held upon the same subject, acknowledge themselves satisfied that the above-described tract was granted by the persons above mentioned, for which reason they, the said Monokyhickan, Lappawinzoë, Tishekunk, and Nutimus, agree to release to the proprietors all right to that tract, and desire that it may be walked, traveled, or gone over by persons appointed for that purpose.

"It will, no doubt, appear strange that no notice is taken of the deed of 1718, and that Sassoonan, the Delaware king with whom the treaty of 1728 was held, though still alive was not present at any of these meetings; but the reason was plain: The deed of 1718 fixed the boundaries so certain that no advantage could be taken of it, and had Sassoonan been there he might have obstructed their measures. For, had he doubted there being a deed he might have objected that the evidence of persons declaring that they remembered a treaty's being held (for that is all that William Biles and Joseph Wood say) did not prove that a deed was granted, and he might have called upon them to prove it regularly by the evidence of those who were witnesses to the execution of it. Or, had he admitted the deed, he might have insisted that it was fully considered at the treaty in 1718, and that the tract therein described had already been walked out, and was included in the deed then granted. And how these objections would have been answered is hard to say. He would, no doubt, have put them in mind that their late purchase of lands on Tulpyhockin was a further confirmation on their part of the boundaries agreed on in the deed of 1718, because thereby the proprietors admitted that the Oley Hills, which are a continuation of the Lechay Hills, was the northernmost extent of any claim the proprietors could make under any former Indian purchases.

"It was therefore necessary in order that things might be carried on quietly that the deed of 1718 should be passed over in silence and that Sassoonan should not be present nor any of those who signed that deed. If it be asked what advantage could be gained by getting the deed of 1686 confirmed, we shall easily see by an account of the walk and of the advantage taken of the blanks in the deed of release. The account of the walk shall be given in the words of the persons who were eyewitnesses, as written and signed by them.

"The relation which Thomas Furniss, saddler, gives concerning the day and a half's walk made between the proprietors of Pennsylvania and the Delaware Indians by James Yeates and Edward Marshall.

"At the time of the walk I was a dweller at Newton and a near neighbor to James Yeates. My situation gave James Yeates an easy opportunity of acquainting me with the time of setting out, as it did me of hearing the different sentiments of the neighborhood concerning the walk, some alleging it was to be made by the river, others that it was to be gone upon a straight line from somewhere in Wrightstown, opposite to a spruce tree upon the river's bank, said to be a boundary to a former purchase. When the walkers and the company started I was a little behind, but was informed they proceeded from a chestnut tree near the turning out of the road from Durham road to John Chapman's, and, being on horseback, overtook them before they reached Buckingham and kept company for some distance beyond the blue

<sup>a</sup> Query: Does the remembering that there was a treaty prove the execution of a deed at that treaty? Joseph Wood's name is set as an evidence in that paper produced as a copy of the deed of 1686, why then did he not prove there was such a sale made or deed given?

mountains, though not quite to the end of the journey. Two Indians attended whom I considered as deputies appointed by the Delaware Nation, to see the walk honestly performed. One of them repeatedly expressed his dissatisfaction therewith. The first day of the walk, before we reached Durham Creek, where we dined in the meadows of one Wilson, an Indian trader, the Indian said the walk was to have been made up the river, and, complaining of the unfitness of his shoe-packs for traveling, said he expected Thomas Penn would have made him a present of some shoes. After this some of us that had horses walked and let the Indians ride by turns, yet in the afternoon of the same day, and some hours before sunset, the Indians left us, having often called to Marshall that afternoon and forbid him to run.

“At parting they appeared dissatisfied, and said they would go no farther with us, for, as they saw the walkers would pass all the good land, they did not care how far or where we went to. It was said we traveled twelve hours the first day, and, it being in the latter end of September or beginning of October, to complete the time were obliged to walk in the twilight. Timothy Smith, then sheriff of Bucks, held his watch in his hand for some minutes before we stopped, and the walkers having a piece of rising ground to ascend, he called out to them, telling the minutes behind and bid them pull up, which they did so briskly that, immediately upon his saying the time was out, Marshall clasped his arms about a saplin to support himself, and thereupon the sheriff asking him what was the matter, he said he was almost gone, and that if he had proceeded a few poles further he must have fallen. We lodged in the woods that night and heard the shouting of the Indians at a cantico, which they were said to hold that evening in a town hard by. Next morning the Indians were sent to to know if they would accompany us any farther, but they declined it, although I believe some of them came to us before we started and drank a dram in the company and then straggled off about their hunting or some other amusement. In our return we came through this Indian town or plantation, Timothy Smith and myself riding 40 yards more or less, before the company, and as we approached within about 150 paces of the town, the woods being open, we saw an Indian take a gun in his hand and advancing toward us some distance placed himself behind a log that laid by our way. Timothy, observing his motions, and being somewhat surprised, as I apprehended, looked at me and asked what I thought that Indian meant. I said I hoped no harm, and that I thought it best to keep on, which the Indian seeing, arose and walked before us to the settlement.

“I think Timothy Smith was surprised, as I well remember I was, through a consciousness that the Indians were dissatisfied with the walk, a thing that the whole company seemed to be sensible of, and upon the way, in our return home, frequently expressed themselves to that purpose. And indeed the unfairness practiced in the walk, both in regard to the way, where, and manner how it was performed, and the dissatisfaction of the Indians concerning it, were the common subjects of conversation in our neighborhood for some considerable time after it was done. When this walk was performed I was a young man in the prime of life; the novelty of the thing inclined me to be a spectator, and as I had been brought up most of my time in Burlington, the whole transaction to me was a series of occurrences almost entirely new, and which, therefore, I apprehend, made the more strong and lasting impressions on my memory.” (Thomas Furniss.)

“Joseph Knowles’s account of the said walk is as follows:

“June 30, 1757. I, Joseph Knowles, living with Timothy Smith at the time of the day and half’s walk with the Indians (Timothy Smith, then sheriff for Bucks County), do say that I went some time before to carry the chain and help to clear a road, as directed by my uncle, Timothy Smith. When the walk was performed, I was then present and carried provisions, liquors, and bedding. About sunrise we set out from John Chapman’s corner at Wrightstown and traveled until we came to the Forks of Delaware. As near as I can remember was about one of the clock the same day. The Indians then began to look sullen and murmured that the men walked so fast, and several times that afternoon called out and said to them, You run; that’s not fair; you was to walk. The men appointed to walk paid no regard to the Indians, but were urged by Timothy Smith and the rest of the proprietor’s party to proceed until the sun was down. We were near the Indian town in the Forks. The Indians denied us going to the town on excuse of a cantico. We lodged in the woods that night. Next morning being dull, rainy weather, we set out by the watches, and two of the three Indians that walked the day before came and traveled with us about 2 or 3 miles and then left us, being very much dissatisfied, and we proceeded by the watches until noon. The above I am willing to qualify to any time when desired. Witness my hand the day and year above said.” (Jos. Knowles.)



"Having by means of the above walk gone about 30 miles beyond the Lechay Hills, which were so solemnly agreed upon in 1718 and 1728 to be the boundaries, it now remained to draw the line from the end of the walk to the river Delaware. We have seen above there was a blank left for the course of this line. Taking the advantage, therefore, of this blank, instead of running by the nearest course to the river, or by an east-southeast course, which would have been parallel to the line from which they set out, they ran by a northeast course for above a hundred miles across the country to near the Creek Lechawachsein, and took in the best of the land in the Forks, all the Minisinks, etc. Thus a pretense was gained for claiming the land in the Forks without paying anything for it. But the accomplishment of this design lost us the friendship of the Indians and laid the foundation of our present troubles, and will, it is to be feared, in the end cost the Proprietaries very dear."

Before the declaration of war and before the breaking off of negotiations between the courts of France and England the English ministry formed the plan of assailing the French in America on all sides at once and repelling them by one bold push from all their encroachments. A provincial army was to advance on Acadia, a second was to attack Crown Point, and a third Niagara, while the two regiments which had lately arrived in Virginia under General Braddock, aided by a strong body of provincials, were to dislodge the French from their newly built fort of Du Quesne. To Braddock was assigned the chief command of all the British forces in America.

Braddock made the necessary military preparations, obtained as far as practicable the indispensable transportations and supplies, and early in June, 1755, abandoned civilization and advanced into the trackless forests. Instead of the sound of the musket it was of the axe felling the primeval forest that was heard. He was accompanied by Washington, by whose advice he, when his obstinacy permitted, profited. After a most laborious march, on the 8th of July the advanced body of Braddock's army reached the Monongahela, at a point not far distant from Fort Du Quesne.

Scouts and Indian runners had brought the tidings of Braddock's approach to the French at the fort. In the adjacent forests were the bark lodges of the Indians, whom the French had collected from far and near. Delawares, Shawnees, and their allies, of whom about 630 took part in the battle. There were about 75 French regulars and 150 Canadians.

The Indian scouts, knowing every foot of the ground, selected a place for the attack which nature had prepared better perhaps than any corps of engineers could have arranged by artificial ditches or embankments. On either side of the road lay a deep ravine or ditch, running parallel with the road and covered with heavy vines and trees. Beyond these were hills and rocks and other ravines, and in this natural ambuscade was where the Indians and French concealed themselves to give Braddock a reception before he arrived at the fort.

Not a man or officer of the British army ever dreamed of these ravines and never saw them during the combat, and it was only long after the disastrous action, when reason resumed its sway and the beaten, driven mob of fugitives considered how pitilessly they were pelted and mowed down by a terrible but unseen fire, they concluded their wily foe must have fired from hidden ravines.

Braddock had exalted courage but no common sense; he was deaf to the judicious counsel of his officers; he neglected to throw out scouts in advance and pressed blindly forward to meet his fate. It is unnecessary to give a detailed account of the battle that followed, or rather the slaughter of the heroic English, who deserved a better fate. The unequal contest lasted three hours, when the survivors fled across the Monongahela. It was a disgraceful stampede.

Braddock saw that all was lost and ordered a retreat, but had scarcely done so when a bullet pierced his lungs. It is alleged that the shot was fired by one of his own men, but this statement is without proof. The retreat soon turned into a rout, and all who remained dashed pell-mell through the river to the opposite shore, abandoning the wounded, the cannon, and all the baggage and papers to the mercy of the Indians. Beaujeau, the French commander, had fallen early in the conflict.

Braddock's wound proved mortal; he lingered but a short time. The loss of the French was slight; of the regulars there were but four killed or wounded, and all the Canadians returned to the fort unhurt except five.

According to Parkman, of the 86 British officers only 23 remained unhurt, and of the 1,200 soldiers who crossed the Monongahela more than 700 were killed or wounded. Other writers have placed the number of killed and wounded at 914.

The Delaware Indians, perhaps more than any other tribe, are responsible for Braddock's defeat, although their sympathy was extended to many of the settlers of Pennsylvania, and Queen Alaquita (A-le-par-qua) lent her aid to Washington and the colonists. Cashwayon, or Captain Newcastle, and Fairfax, her sons, were Washington's guides and escorts, but Shingiss, the sachem of the Delawares, Captain

Pipe of the Wolf tribe or clan, White Eyes and Beaver of the Turtle clan, Ka-te-uskund, Kill Buck, and Wingenond, a medicine man of great renown, and others were prejudiced against the British because of the "Long Walk." Besides, the French had promised them that they would evacuate their country as soon as the English were defeated.

It is not in the nature of the Indians to remain quiet in the midst of war; by the ignominious and disastrous defeat of Braddock the prestige of the English was lost for the time and the Western Indians raised their tomahawks with one accord against the defeated English.

In November, 1758, John Forbes made another attack on Fort DuQuesne. His advance of 800 men under Major Grant was attacked by the French and Indians on both sides of the hill, which now bears his name and is situated right in the center of the city of Pittsburg. That his force was saved from utter annihilation by the stand made by the provincial troops is a well-known matter of history and need not be dwelt on here.

A most timely visit just at this time of the Moravian missionary, C. Frederick Post, to the Delaware and Shawnee chiefs between DuQuesne and Beaver, where he saw Shingiss, Beaver, Killbuck, Kuckquetackton, Pisquetunen, Katenskund, and Delaware George, who seemed as much surprised as pleased at Post's representations, and all agreed that if they had known the feelings and good intentions the British had toward them they never would have taken up the hatchet against them.

This decision completed the demoralization of the French, so that they abandoned their fort, after setting fire to it, and retreated to Canada.

The Indians made treaties with Forbes and remained at peace until fresh causes for hostilities arose and they were again fired up to avenge the wrongs that had been perpetrated on them.

Among these wrongs is the wholesale massacring by the settlers of Indians who professed the Christian faith, on three different occasions, and another is the burning of an aged Delaware chief,<sup>12</sup> who, like the Christian Indians, had been a friend to the settlers. Such memories as these could not be cherished by people who had learned from tradition that injury should be repaid with injury and revenge should be visited upon those who betrayed you, and the consequence was that peace was not long lasting.

The general peace concluded between Great Britain, France, and Spain in the year 1762, although viewed in different lights by persons variously affected in the mother country, was nevertheless universally considered a happy event in America.

"Unhappily, however, we were disappointed in this expectation. Our danger arose from that very quarter in which we imagined ourselves in the most perfect security, and just at the time when we concluded the Indians to be entirely awed and almost subjected by our power, they suddenly fell upon the frontiers of our most valuable settlements and upon all our outlying forts with such unanimity in the design and with such savage fury in the attack as we had not experienced, even in the hottest times of any former war." (From Annual Register, 1763.)

The Delawares, Shawnee, and other Ohio tribes took the lead in this war, and seem to have begun it rather too precipitately, before the other tribes in confederacy with them were ready for action. Many forts fell into their hands. The frontiers of Pennsylvania, Maryland, and Virginia were overrun with Indians, who carried on war in their usual ferocious manner.

Fort Pitt remained all this while in a most critical situation; no account could be obtained of the garrison nor any relief sent to it but by a long and tedious land march of near 200 miles beyond the settlements, and through those dangerous passes where the fate of Braddock and others still rise on the imagination. Colonel Bouquet was appointed to march to the relief of this fort with a large quantity of stores and provisions, escorted by the shattered remains of the Forty-second and Seventy-seventh Regiments, lately returned in a dismal condition from the West Indies, and far from being recovered of their fatigue at the siege of the Havannah.

Early orders had been given to collect provisions on the frontiers of Pennsylvania, but such was the consternation of the inhabitants that no effort was made to obey the orders, nor did the people furnish recruits, though their lives depended upon the result of the expedition.

Colonel Bouquet was a great contrast to the brave, but incompetent, Braddock. He had courage united with prudence, enjoyed the confidence of his soldiers and deserved it, and was studious of their comfort, watchful over their safety. The Indians displayed soldierly qualities, skill, and indomitable courage.

But Bouquet's disciplined forces finally overcame, after a series of hard-fought engagements, the enemy; the latter finally retreated to their remote settlements.

Bouquet supplied Fort Pitt and other places with provisions, ammunition, and stores, and ended the campaign for that season.

In 1764 Colonel Bouquet made a second campaign equally persistent and vigorous: the Indians sued for peace.

The army encamped on the Muskingum, and two men who had been dispatched by Colonel Bouquet from Fort Pitt with letters returned and reported "that within a few miles of this place they had been made prisoners by the Delawares and carried to one of their towns, 16 miles from hence, where they were kept till the savages, knowing of the arrival of the army here, set them at liberty, ordering them to acquaint the colonel that the headmen of the Delawares and Shawanese were coming as soon as possible to treat of peace with him."

Negotiations culminated in the arrangement of a meeting. The meeting was held; the Indians present were: Senecas, Kiyashuta, chief, with 15 warriors; Delawares, Custaloga, chief of the Wolf tribe, Beaver, chief of the Turkey tribe, with 20 warriors; Shawanese, Keissinantchtha, and 6 warriors.

The speakers were Kiyashuta, Turtle-heart, Custaloga, and Beaver. A treaty was entered into and peace for a time secured. All prisoners were delivered up held by the Indians; most promptly by the Delawares. The affecting scenes attending this surrender I have described elsewhere in this book.

### CHAPTER III.

When the Revolutionary war broke out, in 1775, the Delawares were divided in opinion as to whom to assist. Great pressure was brought to bear on them by the British, who made many promises to secure their assistance against the Colonists, but Shingiss, Captain White Eyes, Win ge nond, and Killbuck were friendly to the Colonies, and took sides against the British. Captain White Eyes soon succeeded Shingiss as head sachem. After that he and his followers remained loyal to the Colonies, but Captain Pipe, of the Wolf clan, and his adherents took sides with the British.

It might be interesting here to relate Heckewelder's observations about the rivalry between Captain White Eyes and Captain Pipe:

"At the time of the Revolutionary war I witnessed a curious scene of diplomatic manœuvres between two great men of the Delaware Nation, both of whom had in their time signalized themselves as brave and courageous men and had acquired the character of two great war chiefs. The war which I speak of, which had but lately begun, had made it necessary for the Indians to consult their present and future safety. Captain White Eyes, of the Turtle tribe, who was placed at the head of his nation, had its welfare much at heart. He was in favor of their following the advice given them by the American Congress, which was to remain neutral and not to meddle in the quarrel between the Americans and the parent country. He advised his people, therefore, to remain in friendship with both sides, and not to take up arms against either, as it might bring them into trouble, and, perhaps in the end effect their ruin.

"On the other hand, Captain Pipe, of the Wolf tribe, who resided at the distance of 15 miles, where he had his council fire, was of a different opinion, and leaned on the side of the British. He was an artful, ambitious man, yet not deficient in greatness of mind, as I have shown in a preceding chapter. But his head at that time was full of the wrongs which the Indians had suffered from the Americans from their first coming into the country. His soul panted for revenge, and he was glad to seize the opportunity that now offered. He professed his readiness to join in proper measures to save the nation, but not such measures as his antagonist proposed. What his real object was he did not openly declare, but privately endeavored to counteract all that was done and proposed by the other. White Eyes, however, was a sensible, upright man, and never was deficient in means to support his own measures and extricate himself from the snares with which he was on all sides surrounded by Captain Pipe. Thus they went on for upward of two years, Pipe working clandestinely and keeping his spies continually on the watch upon the other, while White Eyes acted openly and publicly, as though he knew nothing of what was machinating against him.

"At last a circumstance took place which apparently justified Captain Pipe in the measures he wished to pursue. In March, 1778, a number of white people, of those whom we call Tories, among whom were McKee, Elliott, Girty, and several others, having escaped from Pittsburg, told the Indians wherever they came 'that they must arm and be off immediately and kill the Americans wherever they found them, for they had determined to destroy all the Indians and possess themselves of their country.' White Eyes, not believing what these men said, advised his people to

remain quiet, for this report could not be true. Pipe, on the contrary, called his men together, and in a speech which he addressed to them pronounced every man an enemy to his country who endeavored to dissuade them from going out against the Americans, and said that all such ought to be put to death. Captain White Eyes was not disconcerted. He immediately assembled his warriors and told them 'that if they meant in earnest to go out, as he observed some of them were preparing to do, they should not go without him. He had taken peace measures in order to save the nation from utter destruction. But if they believed that he was in the wrong and gave more credence to vagabond fugitives, whom he knew to be such, than to himself, who was best acquainted with the real state of things; if they had determined to follow their advice and go out against the Americans, he would go out with them; he would lead them on, place himself in the front, and be the first who should fall. They only had to determine on what they meant to do, for his own mind was fully made up not to survive his nation, and he would not spend the remainder of his miserable life in bewailing the total destruction of a brave people who deserved a better fate.'

"This spirited and at the same time pathetic speech of Captain White Eyes made such an impression on the minds of the audience that they unanimously declared that they would obey his orders, and listen to no person but himself, either white or of their own color. Indeed, there was too much force, too much majesty in this address to be resisted; when this was reported to Pipe by his emissaries, he was absolutely confounded, and knew not what to do. A few days afterwards, the council of the Delaware Nation received the most friendly and flattering messages from the commandant and Indian agent at Pittsburg, cautioning them 'not to listen to those worthless men who had ran off from them in the night, and to be assured of the steady friendship of the Government of the United States.' Pipe was so put to the blush, and took this matter so much to heart, that he soon after threw off the mask, permitted his men to go out and murder the Americans, and afterwards went off with them to Sandusky, under the protection of the British Government. We have seen in a former chapter that he afterwards saw how impolitic his conduct had been and probably wished to retrace his steps, but it was too late. He had suffered himself to be misled by his passions, excited by the remembrance of former wrongs, and thus was betrayed into his injudicious conduct. Perhaps also his jealousy of Captain White Eyes, whose superiority his proud mind could not bear, did not in a small degree contribute to it. Pipe was certainly a great man, but White Eyes was, in my opinion, the greatest of the two. I was present when he made the speech which I have related, and never shall forget the impression it made upon me."

In the Journals of the Continental Congress of Saturday, December 16, 1776, is the following:

"Captain White Eyes, a Delaware chief, who came down with the commissioners for Indian affairs in the middle department, being introduced to Congress, the President addressed him in the following manner:

"Brother Captain White Eyes, we are glad to see you and we bid you welcome to this council fire, kindled for all the United Colonies.

"We have heard of your friendship for your brethren, the white people, and how useful you have been in preserving peace and harmony between your nation and us, and we thank you for those services.

"We are pleased that the Delawares intend to embrace Christianity. We will send you, according to your desire, a minister and a schoolmaster to instruct you in the principles of religion and other parts of useful knowledge.

"We shall be happy in improving every opportunity that shall offer for convincing your nation and all other nations of Indians of our friendly disposition toward them.

"Before you leave this city we will give you some particular testimony of our regard for you." \* \* \*

The Journals of the Continental Congress for Wednesday, April 10, 1776, contain the following:

"The committee to whom the report on Indian affairs in the middle department and the petition of Captain White Eyes were referred brought in their report, which was taken into consideration; whereupon,

*Resolved*, That the commissioners for Indian affairs in the middle department, or any one of them, be desired to employ, for reasonable salaries, a minister of the gospel to reside among the Delaware Indians and instruct them in the Christian religion; a schoolmaster to teach their youth reading, writing, and arithmetic; also a blacksmith to do the work of the Indians in the middle department. \* \* \*

*Resolved*, That it be referred to Capt. George Morgan, Encas McKay, esq., and Capt. John Neville to adjust and determine all matters of difference between Coquataginta, or Captain White Eyes, and Messrs. Bernard Grantz and Michael Grantz;

and that the arbitrators, in case either of the parties to whom it is recommended to submit to their award shall refuse to abide thereby, report the reasons of such refusal, with a state of the case and other matters they shall think fit, to Congress.

“That disputes which shall arise between any of the white people and the Indians in their dealings (if the latter will consent) be determined by arbitrators, chosen, one by each of the parties and another by the commissioners for Indian affairs, or when they are absent by the agent in the department where the Indian party resides. \* \* \*

“*Resolved*, That the sum of \$300 be presented to Captain White Eyes.

“*Resolved*, That George Morgan, esq., the agent for Indian affairs in the middle department, be empowered to purchase for Captain White Eyes, two horses with two saddles and bridles, and that the treasurers be directed to pay to one said George Morgan, a sum not exceeding \$100 for defraying the expenses thereof.

“*Resolved*, That the following speech be delivered to Captain White Eyes to-morrow morning:

“Brother Captain White Eyes: We have not been unmindful of our promises made to you and your nation the 16th of December. We now thank you for your speech to us on the 2d of last month.

“Brothers, the Delawares: At the council fire at Pittsburg last fall, and since by our brother Captain White Eyes, who hath been all the winter with us, you requested our assistance to promote peace and useful knowledge among you, particularly the knowledge of the Christian religion. We rejoice, brothers, to find you thus disposed, and will, as early as we can, provide a suitable minister and schoolmaster, and a sober man to instruct you in agriculture. These things we agree to do, brothers, at your request, and to convince you that we wish to advance your happiness, and that there may be a lasting union between us, and that, as you express it, we may become one people. The introduction of useful arts among you will be effected, we apprehend, by encouraging handicraftsmen to settle and reside in your country. The method of doing this must be left to your own discretion.

“Brothers, we desire you will make it known among all the Indian nations to the westward that we are determined to cultivate peace and friendship with them, and we will endeavor, by making the best regulations in our power, to prevent any of our people wronging them in any manner or taking their lands; that we will strive to put the trade between us on such a footing as will secure the peace and promote the interest of all parties, and we expect that all the wise men of every Indian nation will use their influence for the same purpose. \* \* \*

“Brother Captain White Eyes, we desire you will inform your nation, your uncles, the Six Nations, and Wyandots, your grand children, the Shawnees, and all the other nations what you have seen and heard among us, and exhort them to keep fast hold of the covenant chain of friendship which we have so lately repaired and strengthened. As you are now about to depart we present you with some money to buy clothes and necessaries and pay your expenses, and we wish you a good journey, and bid you farewell.”

On the next day, Thursday, April 11, 1776, Captain White Eyes<sup>13</sup> was called in, the speech delivered to him, and the money paid.

In Heckewelder's narrative is an account of the death of Captain White Eyes.

“Captain White Eyes, who had hitherto been so indefatigable in preserving the nation at peace, had, soon after the disturbance caused by McKee and party, retired to Pittsburg for the purpose of being nearer to the Indian agent, and take his advice as circumstances might require, that the nation might, if possible, be prevented from being dragged into the war. This chief had a strong desire that his nation might become a civilized people. A retrospect of the change that had already taken place in the Christian Indians, who employed themselves principally in agricultural pursuits, and some even being mechanics, gave him the best hopes of the practicability of the measure; a lively correspondence, therefore, had for a long time been kept up between this Indian agent and the Delaware chiefs and council on the subject, when nothing appeared to him wanting, to carry the measure into effect, but a peace, the war then being the obstacle to seeing his nation happy; he became the more anxious to preserve his nation quiet, until a general peace should take place; he, however, did not live to see that day, for while accompanying General McIntosh's army to Tuscorawas, where a fort was to be built for the protection of the peaceable Indians and frontier settlers, he took the smallpox and died.

The death of this great and useful man was severally lamented by and a great loss to the nation; although his ambitious and political opponent, Captain Pipe,<sup>14</sup> with an air of prophecy, uttered ‘That the Great Spirit had probably put him out of the way that the nation might be saved,’ it was not so considered by the faithful part. His death was, according to Indian custom, made known to all the surrounding nations,

even at some hundred miles distance, who all in due time consoled the nation on the loss."

It was due to Captain White Eyes's efforts that the United States entered into a treaty with the Delaware Indians on September 17, 1778, article 6 of which is as follows:

"Arr. 6. Whereas the enemies of the United States have endeavored by every artifice in their power to possess the Indians in general with an opinion that it is the design of the States aforesaid to extirpate the Indians and take possession of their country, to obviate such false suggestion the United States do engage to guarantee to the aforesaid nation of the Delawares and their heirs all their territorial rights in the fullest and most ample manner as it hath been bounded by former treaties as long as they, the said Delaware Nation, shall abide by and hold fast the chain of friendship now entered into. And it is further agreed on between the contracting parties, should it for the future be found conducive for the mutual interest of both parties, to invite any other tribes who have been friends to the interest of the United States to join the present confederation and to form a State, whereof the Delaware Nation shall be the head, and have a representation in Congress: *Provided*, Nothing contained in this article to be considered as conclusive until it meets the approbation of Congress. And it is also the intent and meaning of this article that no protection or countenance shall be afforded to any who are at present our enemies by which they might escape the punishment they deserve."

The ambition of Captain White Eyes that the fourteenth State in the Union should be an Indian State with the Delaware Nation at its head was never realized, for after his death Captain Pipe's influence prevailed, and many of the Delawares who had been followers of White Eyes listened to the counsel of Pipe and warred against the Americans. In consequence of this Col. David Williamson conducted an expedition against the Delawares and other Indians and, in 1782, massacred in cold blood over 90 Christian Indians at Gnadenbutten, Ohio,<sup>15</sup> but at this time met none of the Delaware and Shawnee warriors.

In June of the same year Colonel Crawford, at the head of an army of several hundred American soldiers, marched against the Delawares, who were then located on the Sandusky. They met the Delawares and were defeated. Colonel Crawford and others were taken prisoners and Crawford was burned at the stake, as a revenge for the murder of the Christian Indians by Colonel Williamson. Accounts of this are given by so many historians that I will not attempt to go into the details here.

The next event of any importance following the expedition of Crawford was General St. Clair's expedition against the Miami, Delawares, Shawnee, and Wyandot, which occurred in 1791. General St. Clair, it is claimed, went into battle with only 1,400 men, although his force was known to be almost as large again.

The following is an account of the battle from Roosevelt's "Winning of the West:"

"On November 4 the men were under arms, as usual, by dawn, St. Clair intending to throw up intrenchments and then make a forced march in light order against the Indian towns. But he was forestalled. Soon after sunrise, just as the men were dismissed from parade, a sudden assault was made upon the militia, who lay unprotected beyond the creek. The unexpectedness and fury of the onset, and heavy firing, and the appalling whoops and yells of the throngs of painted savages threw the militia into disorder. After a few moments' resistance they broke and fled in wild panic to the camp of the regulars, among whom they drove in a frightened herd, spreading dismay and confusion.

"The drums beat, and the troops sprang to arms as soon as they heard the heavy firing at the front, and their volleys, for a moment, checked the onrush of the plumed warriors. But the check availed nothing. The braves fled off to one side and the other, completely surrounded the camp, killed or drove in the guards and pickets, and then advanced close to the main lines.

"A furious battle followed. After the first onset the Indians fought in silence, no sound coming from them save the incessant rattle of their fire, as they crept from log to log, from tree to tree, ever closer and closer. The soldiers stood in close order in the open; their musketry and artillery fire made a tremendous noise, but did little damage to a foe they could hardly see. Now and then, through the hanging smoke, terrible figures flitted, painted black and red, the feathers of the hawk and eagle braided in their long scalp locks; but save for these glimpses the soldiers knew the presence of their somber enemy only from the fearful rapidity with which their comrades fell dead and wounded in the ranks. They never even knew the numbers or leaders of the Indians. At the time it was supposed that they outnumbered the whites, but it is probable that the reverse was the case, and it may even be that they were not more than half as numerous. It is said that the chief who led them, both in council and battle, was Little Turtle, a Miami. At any rate, there were present

all the chiefs and picked warriors of the Delawares, Shawnees, Wiandots, and Miamis, and all the most reckless and adventurous young braves from among the Iroquois and the Indians of the upper lakes, as well as many of the ferocious whites and half-breeds who dwell in the Indian villages.

"The Indians fought with the utmost boldness and ferocity, and with the utmost skill and caution.<sup>16</sup>

"Under cover of the smoke of the heavy but harmless fire from the army they came up so close that they shot the troops down as hunters slaughter a herd of standing buffalo. Watching their chance, they charged again and again with the tomahawk, gliding into close quarters while their bewildered foes were still blindly firing into the smoke-shrouded woods. The men saw no enemy as they stood in the ranks to load and shoot; in a moment, without warning, dark faces frowned through the haze, the war axes gleamed, and on the frozen ground the weapons clattered as the soldiers fell. As the comrades of the fallen sprang forward to avenge them, the lithe warriors vanished as rapidly as they had appeared; and once more the soldiers saw before them only the dim forest and the shifting smoke wreaths, with vague half glimpses of the hidden foe, while the steady singing of the Indian bullets never ceased, and on every hand the bravest and steadiest fell one by one.

"At first the army as a whole fought firmly; indeed, there was no choice, for it was ringed as a wall of flame. The officers behaved very well, cheering and encouraging their men; but they were the special targets of the Indians, and fell rapidly. St. Clair and Butler by their cool fearlessness and in the hour of extreme peril made some amends for their shortcomings as commanders. They walked up and down the lines from flank to flank, passing and repassing one another; for the two lines of battle were facing outward and each general was busy trying to keep his wing from falling back. St. Clair's clothes were pierced by eight bullets, but he was himself untouched. He wore a blanket coat with a hood; he had a long queue, and his thick gray hair flowed from under his three-cornered hat; a lock of his hair was carried off by a bullet. Several times he headed the charges, sword in hand. General Butler had his arm broken early in the fight, but he continued to walk to and fro along the line, his coat off and the wounded arm in a sling. Another bullet struck him in the side, inflicting a mortal wound; and he was carried to the middle of the camp, where he sat propped up by knapsacks. \* \* \*

"Instead of being awed by the bellowing artillery, the Indians made the gunners a special object of attack. Man after man was picked off, until every officer was killed but one, who was wounded; and most of the privates also were slain or disabled. The artillery was thus almost silenced, and the Indians, emboldened by success, swarmed forward and seized the guns, while at the same time a part of the left wing of the army began to shrink back. But the Indians were now on comparatively open ground, where the Regulars could see them and get at them, and under St. Clair's own leadership the troops rushed fiercely at the savages with fixed bayonets, and drove them back to cover. By this time the confusion and disorder was great; while from every hollow and grass patch, from behind every stump and tree and fallen log, the Indians continued their fire. Again and again the officers led forward the troops in bayonet charges, and at first the men followed them with a will. Each charge seemed for a moment to be successful, the Indians rising in swarms and running in headlong flight from the bayonets. In one of the earliest, in which Colonel Drake led his battalion, the Indians were driven several hundred yards, across the branch of the Wabash; but when the Colonel halted and called his men, he found that the savages had crossed in behind him, and he had to fight his way back, while the foe he had been driving at once turned and harassed his rear. He was himself wounded, and lost most of his command. On reentering camp he found the Indians again in possession of the artillery and baggage, from which they were again driven; they had already scalped the slain who lay about the guns. Maj. Thomas Butler had his thigh broken by a bullet, but he continued on horseback, in command of his battalion, until the end of the fight, and led his men in one of the momentarily successful charges. The only Regular regiment present lost every officer, killed or wounded. The commander of the Kentucky militia, Colonel Oldham, was killed early in the action, while trying to rally his men and damming them for cowards.

"The charging troops could accomplish nothing permanent. The men were too clumsy and ill-trained in forest warfare to overtake their fleet, half-naked antagonists. The latter never received the shock; but, though they fled, they were nothing daunted, for they turned the instant the battalion did, and followed, firing. They skipped out of reach of the bayonets, and came back as they pleased, and they were only visible when raised by a charge. \* \* \*

"As the officers fell, the soldiers, who at first stood up bravely enough, gradually grew disheartened. No words can paint the hopelessness and horror of such a

struggle as that in which they were engaged. They were hemmed in by foes who showed no mercy and whose blows they could in no way return. If they charged they could not overtake the Indians, and the instant the charge stopped the Indians came back. If they stood they were shot down by an unseen enemy, and there was no stronghold, no refuge to which to flee. The Indian attack was relentless and could neither be avoided, parried, nor met by counter assault. For two hours or so the troops kept up a slowly lessening resistance; but by degrees their hearts failed. The wounded had been brought toward the middle of the lines, where the baggage and tents were, and an ever-growing proportion of wounded men joined them. In vain the officers tried by encouragement, by jeers, by blows to drive them back to the fight. They were unnerved. As in all cases where large bodies of men are put in imminent peril of death, whether by shipwreck, plague, fire, or violence, numbers were swayed by a mad panic of utterly selfish fear, and others became numb and callous, or snatched at any animal gratification during their last moments. Many soldiers crowded around the fires and stood stunned and confounded by the awful calamity; many broke into the officers' marquees and sought for drink, or devoured the food which the rightful owners had left when the drums beat to arms.

"There was but one thing to do. If possible the remnant of the army must be saved, and it could only be saved by instant flight, even at the cost of abandoning the wounded. The broad road by which the army had advanced was the only line of retreat. The artillery had already been spiked and abandoned. Most of the horses had been killed, but a few were still left, and on one of these St. Clair mounted. He gathered together torn fragments of the different battalions which contained the few men who still kept heart and head, and ordered them to charge and regain the road from which the savages had cut them off. Repeated orders were necessary before some of the men could be roused from their stupor sufficiently to follow the charging party; and they were only induced to move when told it was to retreat.

"Colonel Drake and a few officers placed themselves at the head of the column, the coolest and boldest men drew up behind them, and they fell on the Indians with such fury as to force them back well beyond the road. This made an opening through which, said Van Cleave, the packer, the rest of the troops 'pressed like a drove of bullocks.' The Indians were surprised at the vigor of the charge, and puzzled as to its object. They opened out on both sides, and half the men had gone through before they fired more than a chance shot or two. They then fell on the rear and began a hot pursuit. St. Clair sent his aid, Denny, to the front to try to keep order, but neither he nor anyone else could check the flight. Major Clark tried to rally his battalion to cover the retreat, but he was killed and the effort abandoned.

"There never was a wilder rout. As soon as the men began to run, and realized that in flight there lay some hope of safety, they broke into a stampede, which soon became uncontrollable. Horses, soldiers, and the few camp followers and women who had accompanied the army were all mixed together. Neither command nor example had the slightest weight; the men were abandoned in the terrible selfishness of utter fear. They threw away their weapons as they ran. They thought on nothing but escape, and fled in a huddle, the stronger and the few who had horses trampling their way to the front through the old, the weak, and the wounded; while behind them raged the Indian tomahawk. Fortunately the attraction of plundering was so overpowering that the savages only followed the army about 4 miles; otherwise hardly a man would have escaped."

On August 20, 1794, Anthony Wayne marched against the Indians and gained a decisive victory over them at the battle of Fallen Timbers. In this battle Wayne had an army of 3,000 men, 2,000 of whom were regulars, and 1,000 mounted volunteers from Kentucky. It is estimated that the Indians numbered between 1,500 and 2,000.

In nearly all these Indian wars some of the Delawares remained loyal to the colonies. When Harrison marched against the Prophet on November 6, 1811, he encamped within 3 miles of the Prophet's town; thence he sent Delaware chiefs on a mission to the Prophet, but the latter treated them with scorn. The Indians attacked and retreated several times, until after daylight, when they were attacked and dispersed by the mounted men, and retreated, leaving 40 of their dead on the field. Harrison's loss was upward of 60 killed and at least as many wounded. This battle is known as the battle of Tippecanoe.

Two years afterwards the battle of the Thames was fought by General Harrison on one side and Colonel Procter and Tecumseh on the other side. This battle resulted in the death of Tecumseh and the defeat of the British and Indian forces, and this was the last battle in which any Delaware fought against the United States.



although it is claimed that some of the Delawares, still loyal, were in the service of Harrison.

Just how many Delawares assisted the Americans in the war of 1812 I am not able to state, but it appears, from a letter from John Graham, chief clerk of the War Department, dated December 18, 1815, to John Johnson, at Piqua, Ohio, that \$10,288 was paid to the Delaware Indians at one time, being a balance claimed to be due them as compensation and for losses sustained during the war. But the Delawares had much to contend with. The influence of Captain Pipe and his followers was strongly felt and when the prophetic words of the Delaware chief, Pachgantschillas, were repeated to them, it was hard for the friends of the American colonists to defend their actions.

Pachgantschillas said:

"I admit that there are good white men, but they bear no proportion to the bad; the bad must be the strongest, for they rule. They do what they please. They enslave those who are not of their color, although created by the same Great Spirit who created them. They would make slaves of us if they could; but as they can not do it, they kill us. There is no faith to be placed in their words. They are not like the Indians, who are only enemies while at war, and are friends in peace. They will say to an Indian, 'My friend; my brother.' They will take him by the hand and at the same moment destroy him. And so you [he was addressing the Christian Indians at Gnadenhutzen, Pennsylvania], will also be treated by them before long. Remember that this day I have warned you to beware of such friends as these. I know the Long-knives. They are not to be trusted."

Again their lands were being encroached upon, and it seemed as if there was no resting place to be found for them. At each council they were pressed to give up more land, until finally, in 1793, one of the Delaware chiefs stated:

"Money to us is of no value, and to most of us unknown; and as no consideration whatever can induce us to sell the lands on which we get sustenance for our women and children, we hope we may be allowed to point out a mode by which your settlers may be easily removed and peace thereby obtained.

"We know that these settlers are poor, or they would never have ventured to live in a country which has been in continual trouble ever since they crossed the Ohio. Divide, therefore, this large sum of money which you have offered us among these people; give to each, also, a proportion of what you say you would give to us annually, over and above this very large sum of money, and we are persuaded they would most readily accept of it in lieu of the lands you sold them. If you add, also, the great sums you must expend in raising and paying armies with a view to force us to yield you our country, you will certainly have more than sufficient for the purpose of repaying these settlers for all their labor and their improvements.

"You have talked to us about concessions. It appears strange that you should expect any from us who have only been defending our just rights against your invasions. We want peace. Restore to us our country, and we shall be enemies no longer. \* \* \*

"We desire you to consider, brothers, that our only demand is the peaceable possession of a small part of our once great country. Look back and review the lands from whence we have been driven to this spot. We can retreat no farther, because the country behind hardly affords food for its present inhabitants, and we have therefore resolved to leave our bones in this small space to which we are now confined."

Notwithstanding the great insecurity of their homes they were not idle, but cultivated large fields of corn and vegetables.

Gen. Anthony Wayne observed this, and in one of his letters remarked that their lands "appear like one continued village for a number of miles, both above and below this place; nor have I ever before beheld such immense fields of corn in any part of America from Canada to Florida."

Finally, in 1818, the Delaware Indians, at the treaty of St. Marys, ceded to the United States all of their lands in the State of Indiana, the United States promising to provide a country for them to reside in west of the Mississippi and to guarantee to them the peaceable possession of the same. They were to have, in addition to the sums promised by previous treaties, \$4,000 a year and were to be allowed to remain three years longer in their homes. The Government also agreed to pay them for their improvements on their lands and to give them 120 horses and a sufficient number of pirogues to aid in transporting them to the west side of the Mississippi; also provisions for the journey.

In 1829 a supplemental article was added to this treaty in which it was agreed that the country in the forks of the Kansas and Missouri rivers selected for their homes "shall be conveyed and forever secured by the United States to the said Delaware

Nation as their permanent residence, and the United States hereby pledges the faith of the Government to guarantee to the said Delaware Nation forever the quiet, peaceable, and undisturbed enjoyment of the same against the claims and assaults of all other people whatever."

An additional permanent annuity of \$1,000 was promised; 40 horses and the use of 6 wagons and ox teams to assist in the removing of heavy articles; provisions for the journey, and one year's subsistence after they reached their new homes; also a grist and saw mill within two years.

By the year 1833 all of the Delawares had reached their new homes and the Commissioner of Indian Affairs said that year, "The agent for the Delawares and Shawnees states that he was shown cloth that was spun and woven, and shirts and other clothing made by the Indian girls." The same year he reports that the Delawares had in cultivation 1,500 acres of land in grain and vegetables and were raising a great many hogs, cattle, and horses.

"They are a brave and enterprising people and at peace with all neighboring Indians."

In 1844 the chiefs and counselors of the Delawares petitioned the Secretary of War that the school funds to which they were entitled by treaty provisions might be paid to the Indian manual labor school at Fort Leavenworth Agency, and that they might thereafter be guaranteed the education and subsistence of Delaware children, not exceeding 50 at one time.

It developed in these negotiations that \$2,000 were due them on arrears of their school funds. The Secretary assented to this request, but imposed five conditions. The most amazing one was that "the interest to be paid annually when it may suit the Treasury; and this ratification to be subject to withdrawal, and the agreement itself to rescision, and to be annulled at the pleasure of the Department."

#### CHAPTER IV.

In most every war in which the United States has been engaged some of the Delaware Indians aided and assisted the Government, and even in the Florida war<sup>15</sup> we find that the Delawares furnished about 100 warriors, guides, and scouts for the United States Army. But it seems that in their military service, like their other dealings, they were neglected. Following are two letters on file in the Office of the Commissioner of Indian Affairs on this subject:

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
*June 28, 1855.*

SIR: Your letter of the 15th instant, inclosing one from Agent Robinson requesting copies of lists of the names of Delaware warriors who have performed military service for the United States, and which were forwarded here by you in September, 1853, was duly received.

For his convenience and information I transmit herewith copies of the lists named by him, also one naming those Shawnees who have obtained bounty-land warrants for services in the Florida war, which was furnished to the Office at the same time.

Very respectfully, your obedient servant,

CHARLES E. MIX,  
*Acting Commissioner.*

A. CUMMING, Esq.,  
*Superintendent Indian Affairs, St. Louis, Mo.*

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
*April 25, 1862.*

SIR: I have to acknowledge the receipt of your letter of the — instant, inclosing an application from the Delaware chiefs for money due them for military service in the Florida war, and have to inform you that as the subject pertains to the jurisdiction of the War Department, the papers have been referred to the Secretary of the Interior, with the request that the same be referred to the Secretary of War.

Very respectfully, your obedient servant,

WM. P. DOLE, *Commissioner.*

S. S. MENAGER, *Present.*

As early as January, 1793, the Delawares and Shawnees negotiated with Baron De Carondelet for lands west of the Mississippi, in the State of Missouri, and the Delawares resided there until the year 1815.

About this time the Cherokee were living on the Arkansas River at that place, which afterwards became the Cherokee Nation.

The Osages, a powerful tribe who claimed the territory, made war against the Cherokee and were about to subdue them, when messengers were sent to the Delawares in Indiana, beseeching their aid. The Delawares sent warriors to their rescue and found the Cherokee near Cantonment Gibson (later Fort Gibson), in a stockade they had erected for their defense, the Osages having seized most of their stock, destroyed their homes, and forced them to this place. As the Algonkin warriors marched in, there was great rejoicing among the Cherokee, and after a few days of rest—dancing and feasting—they marched against the Osages, who had withdrawn west of Grand River. They overtook them at a place called Cabin Creek, but this fight was only a skirmish. From there the Osages retired to a high hill on the east side of the Verdigris River. After sending their women and children across the river, which was swollen from recent rains, the Osage warriors fortified themselves on top of this hill, which is quite difficult to ascend, owing to the stone precipices around the summit. The Cherokee, and especially the Delawares, were mostly well armed with guns; the Osages principally having bows, arrows, and spears. The battle raged from early in the morning until late in the afternoon, during which the Osages would roll large stones and boulders over the precipice to repel the assaults of the Cherokee and Delawares. But in spite of the advantage in position and numbers possessed by the Osages, the summit was gained in the afternoon and the Osages completely routed. Their chief, Clarenore, was killed and buried on the mound which was named after him. Thereafter the Cherokee had no further trouble from this source.

Another party of Cherokee went on still farther south and located in Texas, on the Sabine River, where they had established themselves as frontier guards between the settlers of Texas and the wild Indians of the plains, who would swoop down from the territory of the United States into that part of Mexico and had become a constant menace to her subjects in that part of the republic now known as Texas. These Cherokee, too, soon needed the aid and assistance of the Algonkins, and the Delawares, true to their alliance, the Shawnees, and a few other of the Algonkin tribes again went to their rescue.

Here, on the Sabine River, we find the Indians, who justly claimed much of the North American continent, making a treaty first with one class of the invaders and then with another, and finally getting a grant, or an acknowledgment of title, to the land from both Mexico and Texas, and, having faith in their promises and fighting for the protection of Texas, only to find themselves cruelly driven away as soon as Texas was able to do without the Indians' aid, notwithstanding the fact that Texas had guaranteed to protect them against invasion, or purchase the land should the Indians wish to sell.

This chapter of the history is well told by referring to parts of an old letter, which is as follows:

"The undersigned, chiefs of the Shawnee and Delaware Indians, acting for their tribes, having faith in the justice and truth of our white brethren in the great State of Texas, and faith in the promise of their Great Captain, Sam Houston, and others in the world beyond the skies, respectfully ask the assistance, relying upon the promises aforesaid of your excellency, in carrying out these promises made in good faith to our people.

"The agreement between the Delaware and Shawnee Indians entered into between the Republic of Texas and themselves was unfortunately lost and destroyed by fire some time during the year of 1855. We have, through the aid extended by many of your people, been made acquainted with many facts which conclusively proves to us that we are in justice entitled to consideration and help from the white brethren of the State of Texas.

"The first fact to which we beg to call your attention as tending to prove our rights to consideration and aid from the State of Texas, is the treaty signed at Colonel Bowles's village, on the 23d day of February, 1836, in the first year of the provisional government of Texas; for a more detailed description of the matters set forth in the treaty reference is here made to the record of the same in the Department of State and the War Department.

"The treaty shows that its object and purpose was to provide for an everlasting peace between the Shawnees and Delawares and the Republic of Texas, and the various other tribes within the borders of the Republic.

"A short time subsequent to the making of this treaty, the history of Texas records the fact, and the same is recollected by many of the pioneers of your great State, that a conspiracy was entered into between the Mexicans, then resident in your State, and many of the wild tribes of Indians, which tribes are named in the treaty before referred to, and they rebelled against the Republic of Texas. This conspiracy having been brought to the notice of the Shawnee and Delaware

Indians before the whites had any knowledge thereof, it was revealed by the Shawnee and Delaware Indians, and the same thwarted by reason of the knowledge of the conspiracy being communicated to the whites before the same became well organized. The Delawares and Shawnees, on being solicited by the other Indians and Mexicans to take part in the conspiracy, refused to do so, and the head chief of the Shawnees immediately upon learning of such conspiracy dispatched his own son to notify the whites of its existence, and thereby enabled them to prepare and circumvent the same.

"They suffered many indignities and deprivations of property and person by reason of having revealed the knowledge of this conspiracy to the white people, and the wild tribes and the Mexicans retaliated in various ways, and they lost a great deal of property and life by reason of their loyalty to the conditions of the treaty entered into as before stated.

"These are facts that appear of record in the War Department and rest in the memory of all of the old pioneers now living.

"In the year 1839 there was a general order issued by the Federal Government for the removal of all the Indians from the Republic of Texas. Through the intercession of the then acting president of your provisional government, Lamar, the commissioner who was charged with carrying out the order of removal, was prevailed upon not to molest or remove the Shawnees and Delawares.

"The next fact to which attention is called as tending to prove our consideration to aid and to help, and to be reimbursed for the land ceded to us by treaty, is two letters from commissioners of the State of Texas, written January 4, 1841, and also to an account allowed by President Sam Houston for expenses incurred by the Delawares and Shawnees for ferrage for themselves and horses in crossing the river to go on the warpath against the Comanche Indians, and to suppress them at the instance of the Republic aforesaid. The records of the Department of State show the issuance of ammunition to these Shawnees and Delawares for the purpose of carrying on this war for the suppression of the Comanches. The records further show that the Shawnees and Delawares afterwards acted as interpreters in the peace brought about by their services at the council which lasted from the 28th day of March to the 17th day of April, in the year 1842. The records further show that President Houston gave his drabill to Joe Harry and Jack Harry for services in protecting the frontier in 1842.

"The records further show that one Jim Shaw, a Delaware Indian, in 1841, rescued a Mrs. Tidwell and her children from the Comanches, and delivered them to their bosom friends. This evidence is referred to for the purpose of showing that the Shawnees and Delawares were always loyal to the treaty entered into between them and the State of Texas on the 23d day of February, 1836, which treaty is signed by Sam Houston and John Forbes on the part of the provisional government of Texas, and the head chief of the various tribes mentioned in said treaty; these facts, taken in connection with the valuable services rendered by them during the various Indian wars, as shown by the records of the War Department, prove that they are entitled to be reimbursed for the lands ceded them by the Republic of Texas.

"We also call attention to the minutes of the council held at Tiwocama Creek, commencing on Tuesday, the 28th of March, 1843; there was present as commissioner in behalf of the provisional government of Texas, G. W. Terrell, John S. Black, and T. J. Smith, and T. Brysen, secretary of said commission; the commission on behalf of the United States was Hon. Pierce Butler. The following tribes were represented in this council, viz: The Delawares, Shawnees, Caddoes, Wacoos, Ironise, Anadarkas, Tawaconos, Keeches.

"The following individuals acted as interpreters during the sitting of the council, viz: John Conner, Jim Secondeyne, Jim Shaw, Louis Sanchez, Jessy Chisholm, and Red Horse. These were the chief men of the Delawares and Shawnee Indians, and were used by the State of Texas in negotiating and treating with the other tribes of Indians.

"The agreement for a treaty was effected at this council between all the hostile tribes of Indians within the borders of the State, and afterwards all these tribes were removed to the Indian Territory with the exception of the Shawnees and Delawares, to whom the commissioners on the part of Texas ceded 40 square miles of land situated on the Brazos River.

"In view of these facts, and knowing traditionally of our rights to the land so ceded by the commissioners of the provisional government of Texas, for meritorious services as heretofore described, and upon investigation of our rights to the same, we have concluded to ask this great State to reimburse us for the same, or to cede us other lands in lieu of the same that we may have a home, the fee to be held in the remainder of our nation in trust for all.

"In conclusion, we will say that, believing in the justice of our rights and relying on the bounty of the State of Texas for redress of wrongs, we ask that other lands be ceded to us in lieu of those, or that an appropriation be made of sufficient money to purchase other lands in place of those formerly ceded us for the purpose of a home."

Though there never were more than 250 Delaware Indians at any one time in the State of Texas, yet they played a most important part in that State during its formative period, and authentic documents still exist containing a record of their many notable deeds of heroism entitling them to a high place in the history of the "Lone Star State."

From Marcy's "Explorations of the Red River," we get the following:

"The Comanches during the past year have not been friendly with the Delawares and Shawnees, and although there has as yet been no organized demonstration of hostilities, they have secretly killed several men, and in consequence our hunters entertain a feeling of revenge toward them. They, however, go out alone every day upon their hunts, are frequently 6 or 8 miles from the command, and seem to have no fears of the Comanches, as they are liable to encounter them at any moment; and being so poorly mounted that they could not escape, their only alternative would be to act on the defensive. I have cautioned them upon the subject several times, but they say that they are not afraid to meet any of the prairie Indians, provided the odds are not greater than six to one. They are well armed with good rifles—the use of which they understand perfectly—are intelligent, active, and brave, and in my opinion will ere long take ample satisfaction upon the Comanches for every one of their nation that falls by their hands.

\* \* \* \* Upon passing the trail of the Indians to-day, one of our Delawares looked for a moment at the foot-prints, picked up a blade of grass that had been crushed, and said the trail was made two days since, when to us it had every appearance of being quite fresh; subsequent observations satisfied us that he was correct.

"Upon another occasion, riding along over the prairie, I saw in the sand what appeared to me to be a bear track, with the impression of all of the toes, foot, and heel; on pointing it out to one of the Indians, he instantly called my attention to some blades of grass hanging about 10 inches over the marks, and explained to me that while the wind is blowing these blades are pressed toward the earth, and the oscillation thereby produced had scooped out the light sand into the form I have mentioned. This, when explained, was perfectly simple and intelligible, but I am very much inclined to believe the solution of it would have puzzled the philosophy of a white man for a long time.

"A few such men as the Delawares attached to each company of troops upon the Indian frontier would, by their knowledge of Indian character and habits, and their wonderful powers of judging of country, following tracks, etc. (which soldiers can not be taught), enable us to operate to much better advantage against the prairie tribes. In several instances when we have had our animals stray away from camp I have sent six or eight teamsters for them, who, after searching a long time, would often return unsuccessful. I would then send out one Indian, who would make a circuit around the camp until he struck the tracks of the lost animals, and following them up would invariably return with them in a short time. In this way their services are almost indispensable upon an expedition like ours.

"One of the Delawares has seen fresh buffalo tracks to-day going to the southeast, and we still cherish the hope that we may yet encounter them.

"John Bushman, our interpreter, was much surprised to-day, on calling a doe toward him with a deer bleat, to see a small fawn following after its mother; but imagine his astonishment when immediately behind the fawn came a huge panther bounding rapidly toward him, and in a twinkling he fastened his claws in the vitals of his victim. He, however, in this instance, caught the tartar, and paid dearly for his temerity, as John, with a spirit of indignation that would have done credit to the better feelings of any man, raised his rifle and, instead of killing the deer, which was entirely at his mercy, planted the contents in the side of the panther.

"The method of hunting deer by the use of the bleat is practiced extensively by the Delawares in this country and with great success."

In the Indian Office at Washington, D. C., will be found filed the following letters:

BRAZOS AGENCY, *October 7, 1855.*

Major NEIGHBORS,

DEAR SIR: I felt all well at my agency, and the Indians quiet and contented.

Twenty-four of Shani-co's tribe came in and reported that he will be in before long. The men returned from Mexico bringing some nine or ten horses, which Tekinsee took from them and turned over to me. He also sent a man to a band of Taconies

and brought in five more horses, four of them Delaware horses and one Pino Shaw's horse. Men are at work and pushing things. The party of Delawares that left when you did, or a day or two after, returned bringing seven scalps and two horses. They report that they followed the trail for several days, after their horses, and that it gave out, but they continued the direction until they struck a fresh trail, which was the two that killed Skidmore. They followed that trail across Red River and stopped at noon, when a party of ten Comanche Indians came up to them. They had a conversation and finally camped together, each party watching the other; for Jacob says he could understand every word they said and they agreed among themselves to attack the Delawares, kill them, and take their horses next morning at daybreak.

But the Delawares lay awake all night, and at daybreak they opened fire upon them and killed four, charged the rest and killed all but two, one of whom was badly wounded, and the other they could have killed but they wanted him to carry the news of their defeat back to the Comanche. One they did not scalp, as he fell in a water hole and sank. They brought the bows, lances, shields, and tricks of the party.

They told Jacob that they had met the Indians that killed old Skidmore and had learned from them that there were plenty of horses down here, and that they were on their way down to kill and steal, and that there was a large war party coming down to kill John Conner, Ketemsee, Lambshead, and all they could find.

They seemed to know all about the condition of the posts and our frontier, and said that they had joined the Sioux Indians against the whites in the North. The captain commanding the party killed was Yamparico and had a black cloth coat, an undershirt and a daguerreotype with him, and on his shield were some twenty white scalps, mostly white women. I have this shield and spear.

The two Indians that killed Skidmore went on to the San Saba and stole seven horses and came back in their trail to the Caddo Peaks. From there they struck due north and went to the main Comanche camp. A party of 12 men followed them and lost the trail. They then came on to the posts and then here to see Captain Ross.

I have no doubt we will have the devil to pay, and our frontier is in the greatest danger. I hope you may succeed in your plans, as it is the only hope I have of having anything done. The Indians here are ready and willing to go against the Comanche, and I think them about the best protection we have if they were managed by some white man.

A few killing scrapes will give them a distaste to these parts, anyhow. Jacob learned from the captain he killed that the point selected for winter quarters of all the wild Indians was on main Red River, where it runs through the mountains, and that some eight or ten tribes united with the Sioux in their war. John Conner says he ascertained from a Noconee that that is where they expect to winter.

I think there would be no difficulty in finding them if an expedition were gotten up. I shall return to the Clear Fork in the morning and will keep a sharp lookout for any strange Indians. I will make requisition on Major Paul for a detachment of men to go out to the agency and remain there, as I think it proper to give the Government employees all the protection I can.

Respectfully, etc.,

J. R. BAYLOR,  
*Special Indian Agent, Texas Indians.*

COMANCHE AGENCY, TEX., *January 1, 1857.*

The bearer of this letter, John Conner, a Delaware Indian, has been my interpreter for the last two years, and has been known to me for many years.

I recommend him to the kindness of all Americans who may meet him. I know him to be a man of truth, honesty, and integrity.

He has been on the frontier of Texas for nearly thirty years, and has rendered to the governments important services; so much so that the State of Texas has given him a league of land and made him a citizen of the State.

I ask of all who may meet Mr. Conner a kind reception, and can assure them that the people of Texas, who know him, will appreciate it. The man who has devoted the best of his life in trying to make peace with the wild and warlike tribes on our frontier, who has often risked his life and lost his property, is certainly entitled to the kindness and respect of the people he has served so faithfully.

I therefore ask that Mr. Conner may meet with the kindness he so well deserves from all good citizens.

JOHN R. TAYLOR,  
*Indian Agent, Texas Indians.*

James Swanuck, James Saghundai, James Conner, Delaware Charley, Wetowka, Crane, Solomon Everett, and Bob Skirkett, all Delaware Indians, accompanied Frémont in 1853 across the Rocky Mountains and assisted him in redeeming the State of California from the Mexicans. In Mr. John Charles Frémont's work *Memoirs of My Life*, are many accounts of the adventures these Delaware Indians met on those occasions. In speaking of his experience at Monterey, Mr. Frémont says:

"The Delawares kept an unflinching watch from every peak or lofty crag, and with the instruction and long-practiced vigilance, clear-sightedness, and quick discernment of their race, gave notice of every movement in all directions.

"One morning at sunrise everything indicated a near impending assault by overwhelming numbers. Frémont addressed his people, who assured him with one voice that they were ready to meet death with him on the spot rather than surrender. The Delawares prepared themselves at once for their last battle. They arrayed themselves in their full tinery, put their red war paint on themselves and on their horses, and with all their weapons in order, made the circuit of the camp, singing their war and death songs, their chargers prancing in apparent sympathy with their riders in the solemn but exultant enthusiasm of the occasion; but the enemy shrunk from the crisis."

He further says they were resourceful, brave, excellent marksmen, truthful, unwearied in watchfulness when in a hostile country, as they often were; unselfish, and displaying repeatedly a self-abnegation worthy of highest praise, excepting in one direction, thus alluded to by General Frémont in his *Memoirs*:

"They [the Delawares] regarded our journey as a kind of warpath, and no matter what kind of a path he is upon, a Delaware is always ready to take a scalp when he is in a country where there are strange Indians.

"They were skillful and intrepid scouts, and when in camp duty watchful and vigilant ever."

Notwithstanding that they faithfully served Frémont on all occasions, and never for one moment faltered in the duties that were required of them, when their work was performed and they received their discharge the United States Government denied the responsibility of fulfilling the contract that General Frémont made with them, and, as far as I know, to this day neither they nor their heirs have received the money or land warrants to which they were entitled.

Following is a certificate signed by General Frémont and two letters from the acting Commissioner relating thereto:

This will certify that the following-named Delawares, James Swanuck, James Saghundai, James Conner, Delaware Charley, Wetowka, Crane, Solomon Everett, and Bob Skirkett were with me on an exploring expedition to California in the year 1846; that, being on the shore of Lake Hamath about the middle of May of that year, I received directions from the United States Government which changed the exploring expedition into one of a military character, to which the services of the above-mentioned men were valuable and necessary.

To induce them to undertake the new service which would be required of them, I promised that I would endeavor to obtain for them the additional compensation of \$2 a day each, which I offered them on the part of the United States. They accepted the offer and enlisted accordingly in the service of the United States.

This engagement was afterwards renewed in July, when the war broke out openly in California, when they enlisted for the war. From that time (15th May) until about the 20th of November they were actually and efficiently engaged in this service, performing their duties with remarkable courage and fidelity, by which they entitled themselves to all the favors and consideration which have been granted or may be granted to the men who served in the Mexican war.

Among the rest they are entitled to land warrants.

J. C. FRÉMONT.

NEW YORK, 56 WEST NINTH STREET,  
March 21, 1857.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,  
Washington, June 10, 1889.

SIR: I am in receipt of a letter from the United States Indian agent at the Quapaw Agency, Ind. T., in which he states that Mr. George Washington, one of ten Delaware Indians who accompanied Gen. John C. Frémont on his California expedition in 1853-54, has in his possession an agreement in writing which reads as follows:

"WESTPORT, Mo., September 16, 1853.

"I have this day made an agreement through Jim Secondi by which ten Delaware hunters, good men, are to accompany me on my journey to California and back to

this country. The ten Delawares are to furnish their own animals, and are each to be paid \$2 per day. They are to provide themselves with good animals, and if any of their animals should die upon the road I am to pay them for the loss.

"They will of course be furnished by me with ammunition, and the saddles which are furnished are at my own cost.

"JOHN C. FRÉMONT."

The agent states that Mr. Washington has also a copy of a statement bearing the signature of the ten Delawares, detailing the amount due each for work and loss of animals, and requests to be informed as to whether or not the United States has ever assumed the said indebtedness incurred by General Frémont, and if so, how to proceed to procure the same for the claimants.

I will thank you to inform me if the Government is in any way liable for the above indebtedness, and, if so, what steps are necessary to be taken by the said Indians to secure the payment of their claims.

Very respectfully,

A. B. UPSHAW,  
*Acting Commissioner.*

The THIRD AUDITOR OF THE TREASURY.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,  
*Washington, July 9, 1886.*

SIR: Referring to your letter dated June 1, relative to ten Delaware Indians who claim that there are moneys due them for services rendered as scouts for General Frémont on his California expedition in 1853-54, I have to advise you that the honorable Secretary of War, by letter dated the 29th ultimo, states that the United States is not responsible for this indebtedness, as General Frémont conducted at his own expense an exploring party to the Pacific coast.

Very respectfully,

A. B. UPSHAW,  
*Acting Commissioner.*

J. V. SUMMERS,

*United States Indian Agent, Quappaw Agency, Ind. T.*

Not only did the Delaware Indians accompany Fremont in the California and Mexican war, but a number volunteered and served under Col. W. S. Harney for a term of six months from the 1st day of January, 1846. When discharged they believed themselves entitled to compensation for forage and other extras, as they only received their monthly pay and subsisted their own horses; they also believed that they were entitled to the proper quota of land due them as bounty. Their request was referred to the Secretary of War, but so far I have not been able to ascertain whether or not they received satisfactory results.

Some of the Delawares engaged themselves as trappers, hunters, and scouts for the Great Hudson Bay Fur Company, and penetrated the far northwest; and to-day some of their descendants are living in Idaho, Montana, and Oregon, affiliated with the Crows, Nez Percé, and other northwestern tribes. The number now living in the far northwest is estimated at 35. There are also some Delaware Indians at the present time in Canada, descendants of those who allied with the British interests, and some in the last few years have been found in the state of Mexico who speak the same language as the tribe, the principal body of which now reside in the Cherokee Nation.

#### THE CIVIL WAR.

I feel justified by the records based upon authentic documents, in asserting that the Delaware Indians displayed during our late civil war the highest quality of loyalty to the Federal Government, by enlisting in the Army for the Union, and by rendering the most gallant and efficient service afterwards, during the entire war, and by their example and earnest appeals to their neighboring Indians of other tribes, secured at critical periods voluntary enlistments in the Union Army.

Their patriotism was of the most earnest and practical kind, as portrayed in official reports.

For example, in the annual report of the Commissioner of Indian Affairs of 1862 (p. 23) it is recited: "As an instance of their loyalty I will mention this fact: of 201 Delawares, between the ages of 18 and 45, 170 have volunteered and are now in the military service of the United States. It is doubtful if any community can show a larger proportion of volunteers than this."

Agent Johnson, in official report of the same year, bears like testimony to the loyalty and devotion of this people.



In the reports of the Commissioner of Indian Affairs and the Government agents during the remaining years of the war like statements are found, testifying to continued loyalty, and as to the character of the service rendered, say: "They have distinguished themselves as faithful soldiers."

The head and assistant chiefs of the Delawares foresaw the malign cloud of secession looming up threateningly as early as January 3, 1861, pregnant with ruin and disaster to the whole country. Wherever they had influence among the Indians they used it intelligently, earnestly, and in most cases successfully, to continue in the patriotic path of duty. What a remarkable prescience they exhibited in the following appeal to "Our Loyal Grandchildren." They seem to have "scented the battle afar off:"

DELAWARE NATION, KANSAS, *January 3, 1861.*

*To O puth la yar ho la, Muscogee Chief Warrior, and our Loyal Grandchildren:*

We are much rejoiced to receive your letter by James McDaniels and David Balon. Our agent has sent it to our Great Father, the President, at Washington and to General Hunter at Fort Leavenworth. It gives us great pleasure to hear that you are good and true friends to the President and to the Government of the United States.

We hope you will continue to be their friends. If bad men of the south ask you to go to war against the President, stop your ears, don't listen to them; they are your worst enemies; they are trying to destroy you and the country.

Grandchildren, it does our hearts good; we rejoice to hear of the victory you gained over your enemies and the enemies of the Government under your brave leader, O puth la yar ho la.

Grandchildren, we are ready and willing to help you. Our brave warriors are ready to spill their blood for you, but are only waiting to hear from our Great Father at Washington. We have asked of him the privilege of going to your assistance and hope that our request will be granted. We don't wish to go to war against the wishes of our Great Father, the President. We have heard that the President will soon have a large army in the Indian country to protect you; that he has ordered General Lane to march to your relief. We are confident that our Great Father is able and will protect his nice children.

Grandchildren, we pray to the "Great Spirit" to protect you and keep you out of the hands of the bad men of the South who are trying to destroy you and the Government. We have no fears as to the result of this war. The President has large armies in the field that will conquer and punish the rebels. We are proud of our Muscogee children.

JOHN CONNOR, *Head Chief.*  
NE CON III CON,  
SAR CO XIE,  
CHARLES JOURNEYCAKE,  
*Assistant Chiefs.*

Done in the presence of—

F. JOHNSON,  
*United States Indian Agent.*

ISAAC JOURNEYCAKE,  
*United States Interpreter.*

Evidence that the Delawares were endeavoring to induce the Creeks "to stand by the Government" as early as October 9, 1861, is contained in the following letters, written by R. H. Carruth and by F. Johnson, United States Indian agent, respectively:

HUMBOLDT, KANS., *October 9, 1861.*

SIR: A part of the Creek delegation which I took to you at Camp Lane called on me last Saturday as they were returning. They have held councils with the Delawares and Shawnees and other northern tribes, and waited on me for the purpose of agreeing on a time of meeting those tribes in council. I have arranged that delegates from southern Indians be at Humboldt on the 17th of November, and have promised them to write the Shawnees to meet them on the 24th of November.

My reason for appointing their council with the northern tribes one week later is this: I did not know to what points you might require the southern delegations to be taken, and I inclose a letter to the Shawnees, leaving a blank for the place, which you can fill out and send if you approve of the arrangement.

I sent a letter to the Seminole chiefs instructing them to send the letters addressed them by Captain Pike and other Confederate officers to you by their delegation.

I also wrote to the superintendent of a mission station to confer with the other superintendent—the schools are 100 miles apart—and report to Colonel Collin. This

was done at his request, he being absent at the time the Indians were at Humboldt. I instructed him to employ an Indian runner to come here immediately should any important change have taken place among the Indians since the delegation left the Creek Nation. The Delawares wrote the Creeks, urging them to stand by the Government, and they also had a letter from ———, branch, central superintendent. The delegations will be here later than I had wished, but owing to the time the Creeks were among the Shawnees, and it would have been impossible until their return home with their report to induce those tribes to send up others, the time could not be fixed earlier.

I have not the slightest doubt of their coming unless force be used by the rebels to prevent, which I think hardly probable, and in which case we are to be informed by runners. I required that they show their loyalty by keeping you informed of everything the secession influence might do to prevent the Union feeling manifesting itself.

I can not believe John Ross, of the Cherokees, has done what the papers state. If so, all there is left to do is to kindle civil war over his head.

Hoping that what I have done may meet your approval,

I remain, your obedient servant,

R. H. CARRUTH.

Hon. J. H. LANE,  
*Commanding K Brigade.*

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
*January 21, 1862.*

SIR: Your communication to this Office of the 31st December last has been received, inclosing a letter which was brought to you by a messenger from the south as you were holding a council with the Delaware chiefs of your agency, and which letter you desired to be laid before the President of the United States. Your communication also represented the readiness of the Delawares and all the other western tribes to engage in military service on the side of the Government and against the rebel States.

With reference to all these subjects, you will have an opportunity of conferring with the Commissioner of Indian Affairs (who has perused your letter in person) at Leavenworth city, for which destination he left this city on Sunday last on public business.

Very respectfully, your obedient servant,

CHARLES E. MIX,  
*Acting Commissioner.*

F. JOHNSON, Esq.,  
*U. S. Indian Agent, Delaware Agency, Kans.*

The saying is true that the "blood of the soldier makes the general great." It is the conscientious discharge of duty by the subordinates of an army, stating the principle more broadly, "that makes the efficient army." Black Beaver, the famous Delaware scout, is a most satisfactory example illustrative of this. His character, modest, faithful, conscientious in the discharge of every duty, and seemingly oblivious of all personal danger, places him on an exceedingly high plane, worthy of imitation. He had the absolute confidence of those that he guided from danger to safety. He never served anyone that did not bear testimony to his zealous discharge of his duties.

The following is a letter from Black Beaver to the Commissioner of Indian Affairs:

DEAR SIR: I take the liberty of addressing my grievances to you and of respectfully asking your advice in a matter in which I am earnestly concerned.

I would represent that I am an Indian, belonging to the Delaware tribe; that I have been in the employ of the Government all, or nearly all, the time since the commencement of the Mexican war. During the Mexican war I was captain of a company of Shawnee and Delawares in the United States Army.

Since that time, up to the commencement of the last war, I have been employed as a guide or interpreter by the different commanding officers at the posts of Arbuckle and Fort Cobb, in the Indian Territory, and by superintendent and agents for the Indians in the vicinity of Fort Cobb and Arbuckle, as can be attested by Generals Marey, Emory, Sturgis, Stanley, and Sacklitt, any or all of the military officers stationed at the aforementioned posts prior to the war, as also ex-Superintendent Reector, of Arkansas, and all of the United States Indian agents in that locality.

I was at the post of Fort Arbuckle for about five years and the post of Fort Cobb one year immediately preceding the last war, and during that time had invested all of my means and earnings in cattle and hogs, and had, at the breaking out of the

war, a large stock of cattle and hogs, as will be attested by some, if not all, of the aforementioned persons.

In the spring of 1861 General Emory requested me to guide his command and also the combined commands from Forts Smith, Cobb, and Arbuckle to Fort Leavenworth, Kans., which I did, but hesitated about leaving my stock until General Emory assured me that I should be paid by the United States for my losses; and on that representation I complied with his request and came with his command to Fort Leavenworth, Kans., and remained there until the war ceased, when I visited my old place and found that my stock was killed, some having been destroyed by the wild Indians and some by the Southern army.

About two years since I acquainted United States Indian Agent Shanklin with the facts and asked him to adopt measures for procuring my pay for me. He (Shanklin) was agent for the Affiliated Bands of Indians in the southern superintendency, and I was at the time employed as interpreter under his direction.

I have had no word from him in the matter and do not know whether he made any effort in my behalf or not.

I therefore make this request at your hands, hoping that if it may not be in your power to give attention to such matters that you will advise me as to the best course to pursue to get my dues.

I am now an old man (upward of 60 years old) and too feeble to earn a livelihood, and what is justly due me from the Government is all that I have to depend on in my old age. Most, if not all, of the officers before named are well acquainted with me and can vouch for the correctness of my statements.

As to the extent and nature of my claim, I can furnish abundant proof, as many persons of my acquaintance before the war are at their old places.

I would respectfully ask that you make inquiry of General Marcy or General Emory, as to my character and claim, and that you would advise me as to the best course to pursue in the premises.

I have never realized 1 cent from the property that I abandoned, and am now in need.

I do not think that Agent Shanklin has made any effort whatever in my behalf, or if he has, it has been done in such an indirect manner that he has either accomplished nothing or failed to advise me of the result.

I have the honor to be, very respectfully,

BLACK BEAVER.

Address box 22, Baxter Springs, Kans.

The COMMISSIONER OF INDIAN AFFAIRS,

Washington, D. C.

Gen. W. H. Emory wrote to the Commissioner of Indian Affairs, in reference to Black Beaver, as follows:

WASHINGTON, *June 12, 1869.*

GENERAL: I have read carefully the letter of Black Beaver, the Delaware guide, dated Baxter Springs, Kans., June 3, 1869, and I hereby certify that it is every word true. And I exceedingly regret that the Government has so far neglected the claim of this worthy and patriotic man who has rendered such eminent and valuable service.

When the war broke out I was in quasi command of the troops in the Indian country, on the northern frontier of Texas—that is to say, I was to take command and withdraw the troops only in case Arkansas passed the act of secession. She never passed that act before proceeding to actual hostilities and to the attempt to capture the troops stationed in the Indian country, so that when I got information of what was going on I was obliged to act without orders from the Government. Orders subsequently arrived, but not until long after the steps were taken which I now describe and in which Black Beaver rendered such splendid service.

That step was to concentrate all the troops at Arbuckle and withdraw them en masse. Before the concentration could be effected I learned from undoubted authority that 4,000 rebels from Texas were marching directly on me and that some 2,000 from Arkansas were moving to strike my flank.

This compelled me to seek, with my comparatively small command, the open prairie. To do this guides were essential, and, of all the Indians upon whom the Government had been lavishing its bounty, Black Beaver was the only one that would consent to guide my column.

He was living near Fort Arbuckle, in a comfortable house, surrounded by his family, with a small farm well stocked with cattle and horses, and a field of corn. All these he abandoned to serve the United States, with a full knowledge that in doing so his horses and cattle would be seized by the enemy, and his property

destroyed, and such was the case, and Black Beaver has never returned to his home, and it is my belief if he was now to return he would be murdered by the bad white men, who in 1861 instigated the Indians to go into rebellion against the United States and whom he so greatly offended by guiding my command through the prairie in safety to Fort Leavenworth.

I need not say how invaluable was his service and great his sacrifice on that occasion. He was the first to warn me of the approach of the enemy and give me the information by which I was enabled to capture the enemy's advance guard, the first prisoners captured in the war.

I can not too urgently press upon the honorable Commissioner the justice of this claim and the pressing necessity there is for doing something at once to relieve the wants of this aged and worthy man.

I have the honor to be, yours, respectfully,

W. H. EMORY,

*Brevet Major-General, U. S. Army.*

Gen. E. S. PARKER,

*Commissioner of Indian Affairs.*

I estimate Black Beaver's loss at about \$5,000.

W. H. EMORY.

W. H. Emory, whose hearty indorsement of the long-delayed and eminently just claim of Black Beaver against the United States does him credit, was abreast of our foremost-army officers in conspicuous and efficient service for many years. He felt when he penned that letter that his friend Beaver deserved well of the Republic, and no doubt greatly regretted the Government's neglect. He comprehended to its fullest extent the value, at personal sacrifice, of the service rendered his soldiers (and himself) in extricating them from very serious danger. If the Confederates had succeeded in capturing his command, their prestige would have been greatly increased and the Federal cause proportionately injured. We can not now measure the value of the services of the veteran scout, but if disaster had befallen General Emory several chapters relating to the civil war would have been differently written.

There was no drafting during the civil war in Kansas amongst the Delaware Indians or amongst those Indians who had long selected them as their guides. There was no bounty jumping, either. All history records that where the Delaware adopted a cause he entered into it with his whole soul. He is ignorant of half measures. The difficulty was never in inspiring him with enthusiasm, but in restraining him.

I invite the reader's attention in this connection to a letter from Captain Fall Leaf, in which he recites some of the important events of his military career. As a scout he was many years in the employ of the United States Government. As a mark of the distinguished regard and confidence the Government officials of that day entertained for him, in 1860 he accompanied the Prince of Wales, now Edward VII of England, whilst he was touring this country.

DELAWARE RESERVATION, *September 15, 1863.*

DEAR SIR: I was employed by Colonel Sumner about four years ago to guide seven companies of soldiers under him in an expedition against the Cheyennes. I selected six Delawares and did the work assigned me. We whipped the Cheyennes that time, and were discharged by Colonel Sumner and paid off. Colonel Sumner, however, in addition to the money paid me, promised that the Government should give me 160 acres of land. I have never received this land, and I would be glad to have you write to me how to get it.

Colonel Sumner also told me after we were discharged, that if at any time thereafter I should want anything that I should call on you and you would grant it.

One year afterwards I was again called upon by Major Sedwick, and, with six Delawares whom I selected, I guided three companies of soldiers under the major against the Kiowas, and we whipped them also. Major Sedwick also promised me land, and, like Colonel Sumner, told me whenever I wanted anything to call upon the Government and they would grant it.

Again, in the fall of 1861, at the request of Major-General Frémont, I raised a company of 54 Delawares and proceeded, under the instruction of Maj. F. Johnson, our agent, and at the request of General Frémont, to Springfield, Mo. We had no fight this time, but we did all that was required of us, and we went back to Sedalia with General Frémont, and then he paid us off and discharged us. At this time also, General Frémont promised me 160 acres of land and told me also that at any time I wanted anything of the Government to let them know and I should surely have it.

In the summer of 1862 I went out under Colonel Ritchie, of Topeka, Kans. (and had a fight near Fort Gibson; we saw the enemy, the Choctaw Indians, the half-breed; we play ball with them; 50 we laid on the ground; 60 we took prisoners, even the Choctaw general; him I took myself alone; he was a big sesesh; 100 Union men he had killed. I brought him to the Cherokees; they killed him; they gave him no time to live), and Colonel Ritchie made me the same promise that the other officers did. I was captain of a company of 86 Delawares, under Colonel Ritchie, for about four or five months, and have not yet ever received one cent for these services, nor have any of my men yet been paid for these same services, although we all served faithfully and furnished our own horses.

I write to you now to ask you to see that I get pay for all these services, according to promises made me, and that my men also get their pay. We have always served the Government of the United States faithfully whenever the Government keeps its promise to us. \* \* \*

I am, very respectfully,

CAPTAIN FALL LEAF.

Signed in presence of—

WM. J. McNEIL CLOUGH,

PAUL JORDAN.

I forgot one thing more. We wish you would ask the President to send our men all home. We do not wish to have them discharged away from home. We want them sent back home and then discharged. We are afraid of our homes, and we want the men at home to protect our own women and children and our own property. We wish you would also let us have about 200 guns, with powder and lead, so that we may be ready in case any danger arises at any time.

You will please direct your answer to—

CAPT. FALL LEAF,

(Care Wm. McNeil Clough, Leavenworth City, Kans.)

Hon. W. P. DOLE,

*Commissioner of Indian Affairs, Washington City, D. C.*

#### CHAPTER V.

For a brief space the Delaware Indians enjoyed comparative rest in their new Kansas home. They had yielded to the pressure of the resistless tide of white immigration, and had been forced backward from the waters of the Chesapeake and Delaware bays, step by step, sometimes with their reluctant consent, but more often by force, and always under the alluring promise that their new home should be preserved to them for all time, and that they should never again be disturbed.

Their peace, however, was of short duration, and their dream of a home secure from the rapacity of the white man was soon found to be as evanescent as it had ever been in the past. Hardly had they become accustomed to their surroundings and begun to feel somewhat satisfied with their new situation when the tide of Western home seekers began to make its appearance.

"The first low wash of waves where soon  
Shall roll a human sea."

They were soon encompassed on every side by settlers, and the history of their difficulties and discouragements was again repeated, their lands coveted and trespassed upon, their timber cut and destroyed. They were denied the protection of the law to either their property or persons, and in the hope of satisfying the demands of their neighbors and of the Government were persuaded, in 1854, to enter into a treaty with the United States by which they ceded 558,555.46 acres of the choicest of their lands in trust, which brought them \$1,054,943.37, and at the same time to cede to the United States what was known as the "Outlet," a tract containing more than 1,000,000 acres, for the paltry sum of \$10,000. That this was a scheme conducted in defiance of the law and in violation of former treaty provisions is sufficiently evidenced by the fact that this treaty was never consented to by the Indians in general council, and that the \$10,000 referred to was paid to the men who signed the treaty on behalf of the Delaware Nation. The main body of the Delawares, exasperated and outraged by this proceeding, were ejected into acquiescence by the specious argument that although the proceeding was irregular and unjust, yet as it would doubtless result in their perpetual peace and undisturbed possession of their remaining lands, it was worth the sacrifice.

Here again the fair promises ever held out as an inducement to the Indian to part with his birthright were as elusive as before, for no sooner had the lands thus surrendered been occupied than the pressure became as intolerable as ever.

In the meantime the railroad had made its appearance in the land and was demanding of the politician at home and the Administration at Washington the removal of the Delawares to some other and more remote place, in order that it might have the benefit of their possessions for speculative purposes. With the reappearance of this resistless enemy of the Indian and the reservation system, the Delawares realized that their doom was sealed. The railroad and the settler pressed the politician, the politician pressed the Administration, and the Administration pressed the Indians.

The Leavenworth, Pawnee and Western Railroad Company desired a large portion of the lands remaining to the Delawares, and sought to effect arrangements for acquiring them. The history of the schemes resorted to for this purpose would exceed the limits of this volume. Suffice it to say the struggle became a triangular one, the Delawares seeking to retain the little remnant of ground left to them, the railroad company seeking to acquire it by any means, fair or foul, and the white settler needing and seeking a means of securing a home upon it, and in doubt and perplexity as to the extent of his rights.

This situation is perhaps as well illustrated as it can be by a letter, written in March, 1862, by one of the settlers to the Hon. Lyman Trumbull, then a United States Senator from the State of Illinois, as follows:

ELWOOD, KANS., *March 22, 1862.*

HON. LYMAN TRUMBULL.

DEAR SIR: I wish some information about the Delaware Indians. I will just state that our Senators, Lane and Pomeroy, in speeches and otherwise, urged the settlement of those lands, and as a consequence about 2,000 people are upon those lands, many of them refugees from oppression in Missouri, desiring to make homes for their families in the truly loyal State of Kansas.

Now, we have recently heard that they will be driven from there to make room for an imaginary railroad company, who, I believe, will not come up to their agreement with the Government.

They have advertised to sell said lands and take one-third of the purchase money, when, if a man comes with \$5, they will take it and make out his papers for \$50, \$100, or \$200, and get all they can.

They also have agents in all the towns around to sell land, and if they can not sell lands sell the timber off the lands for firewood, rail, and saw timber at a small price. I will send you one of their notices. The timber is being cut at a dreadful rate now.

Sir, if they had the lands "bona fide," would they thus willfully destroy the timber? I have recently passed through the reserve, and the timber near Lawrence and Oskaloosa is very much destroyed already.

I hope, sir, you will call the attention of the President to these facts and let me know all about it by letter.

I dislike troubling our Senators at this time, but it is an important matter to at least 2,000 as good and loyal people as there are to be found.

And indorsing your course as a statesman for many years, I have taken the liberty to claim your time and patience.

Please write at your earliest convenience and give me all the information you can.

Please send us occasionally some public documents.

Very respectfully, your friend,

P. C. FERGUSON.

The result of all this was that the railroad company acquired 223,966.78 acres of the Delaware lands for \$286,742.15, including the choicest corn land of that famous region, then worth many times the price paid for it. This, together with some 36 sections conveyed to the Wyandottes in 1848, reduced the Delaware holding to 100,022.41 acres. Even the nominal price thus agreed upon was not paid to the Indians at once, but its payment was deferred for many years, and in the meantime the Indians were given security upon 100,000 acres only of the land they had sold, the railroad company, in the meantime, having the right to sell 123,966.78 acres without a particle of security, which they immediately did. The prices realized by the railroad company ranged from \$20 to \$50 per acre, making a net profit of about \$4,000,000 on the Indians' land without a cent of investment. This unconscionable trade was entered into by the Indians, not of their own wish, but they were forced into it by a series of oppressions and embarrassments. The white settlers were demanding the removal of the Indians from the State, that their lands might be opened to settlement. In order to harass and annoy them, legislation was enacted

subjecting their lands and improvements to taxation, in direct violation of the specific provisions of their treaty, and they were threatened with tax sales on account of non-payment. As has been shown, their farms were invaded and trespassed upon, their timber destroyed and stolen, and when they asked redress or relief in the local courts, it was denied them. At the same time they were urged by politicians and others claiming to be their friends to dispose of their lands to the railroad company and thus get rid of their vexations and discouragements.

Thus harassed and irritated beyond further endurance, the Delawares determined to again put themselves, if possible, out of the reach of their tormentors. A council was held, and in May, 1863, a communication was addressed to the Commissioner of Indian Affairs requesting permission to withdraw \$800 of their invested funds, with which to defray the expenses of a delegation of their people to the Rocky Mountains, in the forlorn hope that in those wild and rugged fastnesses they might succeed in finding a harbor of refuge.

To this plea the Commissioner of Indian Affairs, Mr. William P. Dole, replied that the Department was not satisfied with the climatic condition believed to exist in the Rocky Mountain region, and recommended that a location be found in the Indian Territory lying between the States of Kansas and Texas. He stated that he greatly desired "a removal of the Delawares from Kansas, provided they can find a location in the Indian country that can be obtained as a permanent home."

Practically all the able-bodied men of the Delaware tribe having enlisted in the army of the North, negotiations were suspended until after the war, when treaties were entered into between the United States and what are known as the Five Civilized Tribes, residing in the Indian Territory, by which it was provided that the United States might locate friendly Indians within the territory claimed by said tribes upon such terms as might be mutually agreed upon.

On the 4th day of July, 1866, a treaty was finally entered into between the Delawares and the United States, providing for the removal of the Delawares from the State of Kansas to the Indian Territory. In this treaty it was agreed that any Delaware who desired to remain in Kansas and become a citizen of the United States might do so, and receive a share of the land and his proportion of the invested funds of the tribe. The names of all the others were carried upon a certain list and were to remove to the Indian Territory, where a tract of land of sufficient size to give 160 acres to each Delaware was to be purchased by the United States, being first selected by the Delaware Indians, and was to be paid for out of the funds belonging to the Delawares. The members so removing to the Indian Territory were known as "Registered Delawares."

Authority having been given to the Delawares to send a delegation to the Cherokee Nation, for the purpose of examining the country and making a selection, they appointed Capt. John Connor, head chief, Captain Sarcoxie, Charles Journeycake, Joseph Armstrong, Andrew Miller, and Isaac Journeycake, as such delegates, who proceeded to the Cherokee Nation in the fall of 1866, and, after looking the country over, determined to recommend "that part of the country on the Little Verdigris or Caney, beginning at the Kansas line where the ninety-sixth meridian crosses the same and running east 10 miles, thence south 30 miles, thence west 10 miles, and thence north to the place of beginning."

When the contract of purchase between the Delawares and the Cherokee came to be made, the exact location of the lands was left subject to future determination. The selection made as above, though recommended to the Delaware council, was not definitely approved.

On the 8th day of April, 1867, the formal contract was entered into between the Delawares and Cherokee as follows:

"Articles of agreement made this 8th day of April, A. D. 1867, between the Cherokee Nation, represented by William P. Ross, principal chief; Riley Keyes and Jesse Bushyhead, delegates duly authorized, parties of the first part, and the Delaware tribe of Indians, represented by John Connor, principal chief; Charles Journeycake, assistant chief; Isaac Journeycake and John Sarcoxie, delegates for and on behalf of said Delaware tribe, duly authorized, witnessesh:

"Whereas by the fifteenth article of a certain treaty between the United States and Cherokee Nation, ratified August 11, 1866, certain terms were provided, under which friendly Indians might be settled upon unoccupied lands in the Cherokee country east of the line of 96° of west longitude, the price to be paid for such lands to be agreed on by the Indians to be thus located and the Cherokee Nation, subject to the approval of the President of the United States; and, whereas by a treaty between the United States and the Delaware tribe of Indians, ratified August 10, 1866, the removal of said Delawares to the Indian country, south of Kansas, was provided for; and, in the fourth article whereof, an agreement was made by the

United States to sell to the Delawares a tract of land, being part of a tract, the cession of which by the Cherokee to the United States was then contemplated; and whereas no such cession of land was made by the Cherokee to the United States, but, in lieu thereof, terms were provided, as hereinbefore mentioned, under which friendly Indians might be settled upon their lands; and whereas a full and free conference has been had between the representatives of the Cherokee and the Delawares, in view of the treaties herein referred to, looking to a location of the Delawares upon the Cherokee lands, and their consolidation with said Cherokee Nation;

Now, therefore, it is agreed between the parties hereto, subject to the approval of the President of the United States, as follows:

"The Cherokee, parties of the first part, for and in consideration of certain payments and the fulfillment of certain conditions hereinafter mentioned, agree to sell to the Delawares for their occupancy a quantity of land east of the line of the 96° west longitude, in the aggregate equal to 160 acres for each individual of the Delaware tribe, who has been enrolled upon a certain register made February 18, 1867, by the Delaware agent and on file in the Office of Indian Affairs, being the list of Delawares who elect to remove to the 'Indian country,' to which list may be added, only with the consent of the Delaware Council, the names of such other Delawares as may, within one month after signing of this agreement, desire to be added thereto, and the selections of the lands to be purchased by the Delawares may be made by said Delawares in any part of the Cherokee reservation east of said line 96° not already selected and in possession of other parties, and in case the Cherokee lands shall hereafter be allotted among the members of said nation, it is agreed that the aggregate amount of land herein provided for the Delawares, to include their improvements according to the legal subdivisions when surveys are made (that is to say, 160 acres for each individual), shall be guaranteed to each Delaware incorporated by these articles into the Cherokee Nation, nor shall the continued ownership and occupancy of said land by any Delaware so registered be interfered with in any manner whatever without his consent, but shall be subject to the same conditions and restrictions as are by the laws of the Cherokee Nation imposed upon native citizens thereof.

"Provided that nothing herein shall confer the right to alienate, convey, or dispose of any such lands except in accordance with the constitution and laws of said Cherokee Nation.

"And the said Delawares, parties of the second part, agree that there shall be paid to the said Cherokees from the Delaware funds now held or hereafter received by the United States a sum of money equal to one dollar per acre for the whole amount of one hundred and sixty acres of land for every individual Delaware who has already been registered upon the aforesaid list, made February 18, 1867, with the additions thereto heretofore provided for.

"And the Secretary of the Interior is authorized and requested to sell any United States stocks belonging to the Delawares to procure funds necessary to pay for said lands; but in case he shall not feel authorized, under existing treaties, to sell such bonds belonging to the Delawares, it is agreed that he may transfer such United States bonds to the Cherokee Nation, at their market value, at the date of such transfer.

"And the said Delawares further agree that there shall be paid from their funds now or hereafter to come into possession of the United States a sum of money which shall sustain the same proportion to the existing Cherokee national fund that the number of Delawares registered as above mentioned and removing to the Indian country sustains to the whole number of Cherokees residing in the Cherokee Nation. And for the purpose of ascertaining such relative numbers, the registers of the Delawares herein referred to, with such additions as may be made within one month from the signing of this agreement, shall be the basis of calculation as to the Delawares, and an accurate census of the Cherokees residing in the Cherokee Nation shall be taken under the laws of that nation within four months, and properly certified copies thereof filed in the Office of Indian Affairs, which shall be the basis of calculation as to the Cherokees.

"And that there may be no doubt hereafter as to the amount to be contributed to the Cherokee national fund by the Delawares, it is hereby agreed by the parties hereto that the whole amount of the invested funds of the Cherokees, after deducting all just claims thereon, is \$678,000.

"And the Delawares further agree that in calculating the total amount of said national fund there shall be added to the said sum of \$678,000 the sum of \$1,000,000, being the estimated value of the Cherokee neutral lands in Kansas, thus making the whole Cherokee national fund \$1,678,000; and this last-mentioned sum shall be taken as the basis for calculating the amount which the Delawares are to pay into the common fund.



“Provided, that as the \$678,000 of funds now on hand belonging to the Cherokees is chiefly composed of stocks of different values, the Secretary of the Interior may transfer from the Delawares to the Cherokees a proper proportion of the stocks now owned by the Delawares, of like grade and value, which transfer shall be in part of the pro rata contribution herein provided for by the Delawares to the funds of the Cherokee Nation; but the balance of the pro rata contribution by the Delawares to said fund shall be in cash or United States bonds, at their market value.

“All cash and all proceeds of stocks, whenever the same may fall due or be sold, received by the Cherokees from the Delawares under the agreement, shall be invested and applied in accordance with the twenty-third article of the treaty with the Cherokees of August 11, 1866.

“On the fulfillment by the Delawares of the foregoing stipulations, all the members of the tribe registered as above provided shall become members of the Cherokee Nation, with the same rights and immunities, and the same participation (and no other) in the national funds, as native Cherokees, same as hereinbefore provided.

“And the children hereafter born of such Delawares so incorporated into the Cherokee Nation shall in all respects be regarded as native Cherokees.

“WILL P. ROSS, *Principal Chief*.

“RILEY KEYES, *Cherokee Delegation*.

“JOHN (his X mark) CONNOR, *Principal Chief*.

“CHARLES JOURNEYCAKE.

“ISAAC JOURNEYCAKE.

“JOHN (his X mark) SARCOXIE, *Delaware Delegation*.

“Executed and delivered in our presence by the above-named delegates of the Cherokee and Delaware nations at the city of Washington, in the District of Columbia, the day and year first above written.

“JOHN G. PRATT.

“W. A. PHILLIPS.

“EDWARD S. MENAGETH.

“DEPARTMENT OF THE INTERIOR, *April 11, 1867*.

“The within agreement between the Cherokee and Delaware tribes of Indians, concluded on the 8th instant, and providing for uniting the two tribes as contemplated by the Cherokee treaty of July 9, 1866, is respectfully submitted to the President, with the recommendation that it be approved.

“O. H. BROWNING, *Secretary*.

“Approved April 11, 1867,

“ANDREW JOHNSON.”

Although the Delawares had now parted with the last vestige of their lands in Kansas, and as in former times had been overreached and figured out of the principal part of its value, they were loath to leave their fertile fields and the localities to which they had become much attached during a residence of more than thirty years. But as fate seemed to have determined that the vicissitudes which had pursued them for three centuries should not end here, or perhaps as long as a flush of the blood of his ancestors should remain upon his brow, he was hurried and jostled from the land, and though illly provided for a journey in winter weather, they began the process of removal in the fall and winter, many leaving in December. The weather was extremely cold and damp, and it required many days to make the journey in their wagons, driving such stock as they possessed, and incumbered with their household goods, their children, and their aged and sick, many dying along the way. On arriving in the Territory they settled upon unoccupied land, each one selecting for himself, and in many instances purchasing the improvements of such Cherokee as were willing to sell.

It was not an exodus of the whole Delaware people in one body, but each individual prepared himself and family for the journey and made it as expeditiously as his circumstances permitted, sometimes a single family going alone, at other times several families joining together. Sometimes it was necessary to return with wagons, making two or more trips. Thus it was several months before the removal from the Kansas Reservation was entirely accomplished.

#### CHAPTER VI.

The Delaware Indians were by instinct good farmers, as in times past they had by instinct been good hunters and warriors. They were accustomed to the raising of stock and the tilling of the soil, and at once settled upon and occupied the lands

along the borders of the Verdigris and other streams most favorably adapted to agriculture. At this time the Cherokee were violently opposed to the allotment of their land in severalty, it being their fixed determination to hold them in common for all time, the right to do which had been guaranteed to them by treaty. Indeed, any member of the tribe who at this time would have advocated the division of the lands in severalty would not have been able to remain in the country in safety, and several holding these views were obliged to flee. The Cherokee, while in some respects highly civilized, having a complete governmental organization, with schools, asylums, seminaries, etc., were essentially pastoral in their instincts and habits. They preferred to build their houses by the side of streams where the water babbled over rocks; where in the summer they could lie in the cool shadows and fish while their herds grazed on the open pastures far away. The result was the individual Cherokee selected for his home land that was unfitted for agricultural purposes, whereas the Delaware, whose purpose was to devote his life to pursuits purely agricultural, selected the choicest land for this purpose.

The Delawares had been located among the Cherokee but a very few years, when the superiority of their farms, homes, and the more orderly conduct of their business and social affairs began to attract the notice of travelers and the officers of the Government.

The United States Indian agent for the Five Civilized Tribes, in a report made in 1890, discussing this condition, says:

"Among the Delawares nearly every farmer of any pretensions has an orchard. Among them we find some of the best merchants, and there are mills of various kinds owned by them in the different settlements. Their houses are for the most part well built and substantial, and their fences, outhouses, and other improvements are well taken care of. No one who has ever visited the Delaware settlements could fail to note the fact that they are among the most thrifty and intelligent Indians in the entire Indian country."

This is only in line with the representation made by all persons who have visited the settlements of the Delawares from the time of their removal to the Cherokee Nation down to the present. Their churches and schoolhouses are notably the most commodious, best arranged, and best cared for in the country. The same may be said of their homes and their improvements. They have always been an example of good.

One would suppose that, having paid so liberally for the rights they were to acquire in the Cherokee Nation and having selected lands not chosen or occupied by Cherokee, and having come into the country by the invitation of the Cherokee Nation, the two people would enjoy peaceful and harmonious relations; in this, again, the Delawares were destined to meet disappointment, for notwithstanding all these considerations and good example set to their neighbors, and the general benefits that accrued by the settlement of these people within the Indian Territory, petty jealousies began to arise at once and discriminations to be made against them. They were numerically far in the minority, and local legislation and the administration of public affairs was hostile to their interest wherever it was possible for any contrariety to exist.

It will be noted that under the contract between the Delawares and Cherokee, already referred to, the Delawares purchased 157,600 acres of land, for which they paid \$1 per acre. At this time there were immense tracts of public land in the United States of the very highest quality, which the Government was selling at \$1.25 per acre and passing a complete fee title thereto. The Cherokee were jealous of white settlements in their midst, preferring friendly Indians, and it was for this reason that by the 15th article of their treaty with the United States, made in 1866, they had provided that the United States might locate friendly Indians among them. Hence, it will be seen that the price paid by the Delawares for the lands occupied by them was a full and fair market price, at the time the contract was made, on the basis of a complete transfer of title, in fee simple.

In addition to the purchase of specific tracts at the prices mentioned, the Delawares paid into the Cherokee national treasury the sum of \$121,824.28, for the purchase of equal rights and equal participation in the Cherokee national government and in its property and funds. This amount was determined, as provided in the treaty of 1866, between the United States and the Cherokee, that any tribe to be settled upon Cherokee lands should "pay into the national fund a sum of money, not greater in proportion to the whole existing fund than their numbers bear to the whole number of Cherokee." In other words, the Cherokee national fund at this time was found to amount to about \$123 per capita, and so the Delawares (985 in number) paid into the Cherokee treasury \$123 each, amounting to \$121,824.28. At this time the Cherokee owned, or claimed to own, a body of land west of the ninety-sixth degree of longitude, known as the "Cherokee Outlet" and containing about 8,000,000 acres.

This land was entirely separate from what was known as the "Home Reservation," and was from time to time leased to various individuals and cattle companies for grazing and pasturage purposes. A part of the proceeds of these "grass leases" was distributed among the various national funds, and a part was from time to time distributed, per capita, among the Cherokee. Participation in these per capita distributions was denied to the Delawares and to the Shawnee, who had also purchased rights of citizenship in the Cherokee Nation, but had not purchased land.

To correct this discrimination, after vain remonstrances to the Cherokee Nation, the Delawares applied to Congress for authority to bring suit in the Court of Claims for the purpose of determining whether or not the rights purchased by them with the payment of \$121,824.28 included a share in these "outlet lands." This authority having been given, a suit was instituted in the Court of Claims for the purpose of requiring the Cherokee Nation to pay to the Delawares their pro rata share of these lease moneys, and on the 22d of May, 1893, a decree was entered in said court sustaining the contention of the Delawares and holding that under their purchase of equal rights and participation in the Cherokee Nation they were entitled to all the rights of native Cherokee in and to all the lands, including the "Outlet," and proceeds arising therefrom. Appeal was taken to the Supreme Court of the United States, which subsequently affirmed the opinion of the Court of Claims in a somewhat elaborate opinion to be found in the 155 U. S., pp. 196 et seq.

While this case was pending on appeal the Cherokee sold the "outlet lands" to the Government for the sum of \$8,595,736.12, and as a logical sequence to the foregoing decision the Delawares were entitled to and did receive their pro rata share of the funds arising from such sale.

The insistence by the Delawares upon their just rights in respect to the matters involved in the foregoing suit seemed to further irritate the Cherokee, who now sought on every hand for pretexts to annoy and discriminate against the Delawares.

Personal feuds became common, and many lives were lost. Delaware meetings, services in their churches, and social functions were interrupted and broken up. The courts being exclusively under the control of the Cherokee, appeals to them for protection or redress were unavailing, and the Delawares again found themselves in the position of being without the protection of the law either to their persons or property.

The Cherokee now set up the claim that by the purchase of land at \$1 per acre, under the agreement of 1867, the Delawares acquired no title, but a mere right of occupancy during the lifetime of those who were living and registered at the time the contract was entered into. This claim was an afterthought, as all the utterances and expressions of the parties to the contract and the officers of the Cherokee Nation abundantly show, as has been shown, the amount paid, and which was all paid at once in cash, was a high price for the land. At this time many of the Delawares, beneficiaries of the agreement, were old and infirm, some of them 80 and even 90 years of age, and had no expectancy of life, and as a matter of fact many of them died after the contract was made and before the lands were occupied. Some 200 of those who were registered and for whose benefit \$32,000 of the consideration money was paid never went into possession of the land and never removed to the Indian Territory. This circumstance is of itself sufficient to indicate that it was not the intention of the Delawares to purchase a mere life estate, for had it been they never would have included these aged and infirm members who it was hardly possible could enjoy any of the benefits. It was manifestly the expectation that this absolute purchase should inure to them and their children or their descendants. The uniform utterances of the officers of the Cherokee Nation, and of those authorized to speak for it, indicate the same understanding upon their part. The delegation, composed of Chief Bushyhead, one of the most distinguished men the nation has ever produced, and others, in an official signed communication to the Senate Committee on Indian Affairs, as late as June, 1890, say:

"As has been seen, the Delawares purchased 157,600 acres of Cherokee lands lying east of the ninety-sixth degree. That was an absolute and unconditional purchase, and in which lands the Cherokee Nation has no title or interest."

In the argument before the Court of Claims and in the Supreme Court, in the case of the Delawares against the Cherokee Nation, already referred to, the attorneys for the Cherokee repeatedly took, as a datum point in the argument, the ground that this purchase was absolute and unconditional, and that as to this land the Cherokee Nation thereafter ceased to have any interest of any nature or kind whatsoever. In their brief, filed in the Supreme Court (p. 16), they say:

"It will be further observed that, by the agreement between the Cherokee and the Delawares, an absolute purchase at \$1 per acre was made of a specific amount of land—160 acres for each man, woman, and child of the Delawares. As shown by the report of the Indian Office there were 985 Delawares, requiring, at 160 acres

each, 157,600, which, at the agreed price amounted to \$157,600, which was exactly the amount paid to the Cherokees in accordance with the terms and provisions of the fourth article of the Delaware treaty of 1866, and the fifteenth article of the Cherokee treaty of 1866."

It will be noted that the fourth article of the Delaware treaty of 1866, above referred to, is unusually definite in its terms. It provides that "the United States agrees to sell to the Delaware Indians a tract of land—to be selected by the Delawares—equal to 160 acres for each man, woman, and child who shall remove to said country—to be paid for by the Delawares out of the proceeds of the sale of land in Kansas. The said tract of land shall be set off with clearly and permanently marked boundaries by the United States, and also surveyed as public lands are surveyed, when the Delaware council shall so request, when the same may, in whole or in part, be allotted by said council to each member of said tribe residing in said territory."

How unnecessary it was to provide for the survey of these lands and the marking of the same by permanent boundaries if the same was intended to remain a part of the Cherokee domain, with only a life interest for the Delawares then registered, and, on the other hand, how easy it would have been to have said that the purchase which was to be made with the funds and moneys of the Delawares procured at such enormous sacrifice were to be held by an estate less than that by which the Cherokee hold their reservation.

#### CHAPTER VII.

##### OF THEIR RELIGION.

The Delaware Indians had a religion of their own, perhaps as old or older than the Christian religion, and to this day some of them adhere to that faith. In the forks of the Caney River, in the Cherokee Nation, about nine miles south of Caney, Kans., their dance house now stands, and in the full moon of every autumn about one-fourth of the tribe assembles here to give thanks to the Great Spirit. Indians of other tribes may take part and sometimes do. Their dance usually lasts about twelve days. There the story of their ancient religion is told, and each person who feels like doing so may enumerate the blessings the tribe has received, and after each one they say, "and for this we are thankful." This is done before they begin to dance. As they dance the leader sings and all take part who wish; he often stops and exhorts the people on the various parts of the religion, and frequently says, "forgetful we are not when sorrow and tribulations come that the Great Spirit will hear an earnest appeal O-o-o-o-o (here each one holds up his right hand), and we need not ask Him what we want, for better than we He knows our needs, and recognized at once our cry of distress." In relating the origin of this religion the leader often says, "and better than this, said the Great Spirit, my people are these Delawares." Those who believe in this faith are quite sincere, and seem to be as good citizens as the Christian Indians.

Notwithstanding their devotion to their own religious belief, many have sought the white man's religion, and as early as the middle of the eighteenth century, when the Moravians visited the Delaware country in the eastern part of Pennsylvania, they immediately began to furnish teachers. These teachers were not ordained ministers at first, but they were formally set apart for the work by the authorities of the church because they were competent to teach and exhort. These were the Moravian Indian Helpers, or as they were sometimes called, "Assistants."

One of the first of these we know simply as "Anthony," for the practice of the Moravians at that time was to baptize their converts in some simple name, which was used thereafter in preference to their Indian names. When he was a warrior he was a man to be feared, but after hearing the gospel he was truly a converted man and preached the gospel until he died. We know but little about his special work except that he was associated with Zeisberger, the Moravian missionary, and was with him on the trip to Goshgoshunk on the Big Beaver, which has become better known through Benjamin West's famous painting, "Zeisberger at Goshgoshunk." It was here and at this time that Glikkikin, the war chief of the Wolf Clan, was converted.

Other names might be added, such as Job Calloway, Jackob Shebosh, John Papunhank, and Captain Johny, the latter of which had taken a conspicuous part with Glikkikin in Pontiac's war, and at the close of that war was one of the chiefs taken to Pittsburg as a hostage for the good behavior of his tribe. At the time of his conversion he was the head war chief of the Turkey Clan. The story of each of these, and many more who were equally prominent helpers, are but chapters in the long story of the Moravian missions among the Indians. It can be but outlined here, however.

The first Moravian mission in the Delaware country in which only Indians were permitted to live was Friedensshutten (Tents of Peace), which was a short distance from the present city of Bethlehem, Pa. This town grew rapidly, and as it was so near the white settlements, it was decided to emigrate, and a short time later Gnadenhütten was built farther to the west at the junction of Mahoney Creek and Lehigh river. This town being well situated grew with great rapidity, and was reinforced by emigrations from a number of other Indian towns established by Moravians among the Mohican and other tribes, and with them the Delaware village, called Meniolagameka, joined the Gnadenhütten congregation in 1751. Some branch missions were established at other points. But all this was blotted out on November 24, 1755, when a band of Iroquois attacked Gnadenhütten and massacred such of the inhabitants as they could find. Fortunately at that time they were divided into numerous hunting parties and scattered through the woods and the murderers missed them. This is now known as the massacre at Gnadenhütten on the Mahoney, as a more lamentable one occurred later at a namesake of this town in Ohio.

The converts of these missions then moved to Bethlehem. The story of their hardship during the French and Indian war can not be referred to. Near its close, however, new towns were established, Wechquetank being especially intended for the Delaware converts.

It was not until 1767 that Zeisberger and Anthony visited the western part of Pennsylvania. The following year they returned and laid out the town of Friedensshutten, and later the villages of Sheshapon and Lawunakhannek were built for the Delawares, and two years later (1770) the settlement was made on the Big Beaver in King Pakanke's country, heretofore referred to. But westward march was still the command, and the Muskingum (now Tuscarawas) Valley in Ohio was where they were to make their longest stand. Glikkikin joined the Moravians and accompanied Zeisberger to the west. In 1772 Schoenbrun on the Muskingum was founded for the Delawares, and Gnadenhütten, 8 miles farther down the river, was set apart for the Mohicans which had emigrated to the Delaware country, and such other tribes as cared to locate there. Here they lived in comparative peace and plenty, for although there were wars between the surrounding tribes and the colonists, the Delawares, and especially the Moravians, remained neutral, and being cultivators of the soil the earth responded to their efforts with an abundance of grain and vegetables. All travelers passing through the Ohio country stopped at Gnadenhütten or Schoenbrun, the Moravian settlements, and Newcomerstown, and later Coshocton, the Delaware capitals. The advance in civilization which had been made by the entire tribe was always a matter of comment, and in many diaries of travelers through those sections are expressions of surprise at what was found.

In 1773 Rev. David Jones, a Baptist preacher, passed through Newcomerstown and records this: "I returned to Newcomerstown in the afternoon and went to see Captain Killbuck, who is a sensible Indian and uses us with part of the complaisance of a gentleman. He speaks good English, so that I conversed on the subject of preaching." Further in this conversation Killbuck explained to him why the Moravians had such a hold on the Delawares. It was because they never made war upon the Indians. He remarked that some Presbyterians wanted to establish a mission in their country, but as the Presbyterians had fought them and tried to kill them before, they could not put faith in their teachings. But the time came when these Moravian settlements were to pass away. The Revolutionary war began at Lexington and spread southward and westward, until the whole country east of the Mississippi was in a state of turmoil. Most of the Indians of the West were under the influence of the British. The Delawares and Moravians remained neutral. Finally, in 1781, the British commandant at Detroit gave orders to have the Moravian Indians moved nearer Detroit, because their towns were being used as halfway houses by their enemies. This was accomplished to the discomfort and against the will of the Moravians late in the fall of that year. The country to which they were taken, near Sandusky, Ohio, was cold and barren, and their stock of supplies ran so low that at one time they had but three grains of corn each upon which to exist. They had left plenty at Gnadenhütten and Schoenbrun, so they sent details back to procure food. It was on one of these expeditions that a body of Pennsylvania militia met them.

A murder occurred in western Pennsylvania. The militia gathered to pursue the offender, and traced him to Gnadenhütten. When the militia arrived, of course the offenders had retired still farther, but being made up of men in whom there was a general hatred for the whole Indian race, they inveigled the converts, by calling them Christians and talking on religious matters, into two houses, after which they suddenly showed their traitorous designs, made them prisoners, and the following day killed 100 in cold blood—all except 2, who were fortunate enough to escape. Then they set fire to the town and committed such destruction that there was no

desire for those who had not been captured at Gnadenhütten to return, but rather they sought a home still farther from the scene of their former joys and sorrows than the British had taken them. Thus a second time the Delaware tribe had to witness the murder of their people who had accepted the paleface's religion and who were trying to follow the teachings of the Nazarene.

Immediately after the Revolutionary war the remnant of the Moravians located at Fairfield, Canada, and, as theretofore, they prospered. But again the paleface race which had sent them teachers resorted to war. The British and Americans again measured strength in the war of 1812. General Harrison was sent with an army to invade Canada, and Fairfield not only lay in the path of his march but on the battlefield of the Thames, and a third time the Moravian settlements were laid waste by war. But their faith was superior to their discouragements. New Fairfield was started near the scene of the old. But other circumstances intervened, such as the advance of the borderers and white settlers, which was always a menace to the missions, and they did not prosper.

The Delawares who remained in the States were sent to a reservation in Kansas about 1833, and four years thereafter, 1837, the Moravians from New Fairfield resolved to and most of them also emigrated to Kansas, where they established the town of Westfield. There they are to-day, under the care of Rev. Joseph Romig, the last Moravian missionary to the now-called "Moravian Indians."

It might be proper to refer here to one Delaware from this band who became an ordained minister in the Moravian Church, Rev. John Henry Killbuck. He is a direct descendant of William Henry Killbuck, who, in conjunction with Captain White Eyes, did so much for the Americans during the border wars of the Revolution. The ancestor, William Henry Killbuck, was born in 1737, about the time Zeisberger began his missionary labors among the Delawares. He was "one of his tribe," and when his people joined the French in the French and Indian war Killbuck led a party of Delawares against Braddock and Washington. They met on the field made famous by Braddock's defeat. Killbuck was wounded and captured. By the interposition of Colonel Henry, Killbuck's life was saved—an act which Killbuck never forgot, and ever after he was a friend of the Americans and the Moravians. He adopted the name of his benefactor as his own, and ever since, according to the Indian custom, the name "Henry" is a part of the name of everyone of the family of Killbuck. He died in 1811. After the Revolution William Henry Killbuck and his sons joined the Moravians. Just fifty years after, John Henry Killbuck was born. He took the ordinary course of study which his paleface brothers enjoyed, and graduated from the Moravian Theological Seminary in 1884, after which he served one year as a missionary at the Indian mission in Canada, and then accepted a call to assist in starting the Moravian mission on the Kuskokwim River in Alaska. A few years later he returned to the State where he is now living.

After the Delawares moved west of the Mississippi the Moravians discontinued their labors among them, with the exception of the mission at Westfield, Kans. The Baptists, however, established churches, and although they did not push the work the conversion of several Indians gave it a start so that it moved of its own force.

The older of these was Charles Journeyeake, born December 16, 1817, near Sandusky, Ohio. During the first year of his life a treaty was made which disposed of the Ohio lands to the United States, but land was promised them west of the Mississippi. They were permitted to remain on the land for three years thereafter, and in addition they were to receive horses and boats for transportation down the Father of Waters. The three years was extended to eleven before they were started, and it was in 1829 before they reached their new Kansas home. Arriving there they found that Isaac McCoy had preceded them for the purpose of starting a mission. The teachings found a fertile soil in the mind of young Journeyeake, and he and his mother and father soon became converted to the new religion and formed the nucleus of the Delaware Baptist Church. Soon after his conversion he began preaching. But little is known of the spiritual history of the tribe for the first thirty years after the emigration to Kansas. In the year 1866 the tribe was forced to give up its possessions in Kansas, and was moved to the Indian Territory. Here, on November 8, 1871, they organized a church of eleven members, and within a year had built a meeting house. But they had no minister. On one occasion they had to send 40 miles to secure one, in order to baptize 50 converts. While Charles Journeyeake had been exhorting for years he was not ordained. But the need became so great that when 55 years of age he took that step which made him a minister of the gospel. His church prospered, and within four years from the date of organization their membership increased ninefold. But periods of depression come to all. On March 8, 1876, just ninety-four years to the day after the Gnadenhütten massacre,

a tornado passed through the Delaware community, and their church was wrecked. For several years thereafter they had no place to worship, but a new house was later constructed, and on May 9, 1879, it was dedicated.

All this was brought about through the energies of Reverend Journeyeake. Old age came upon him and he became unable to care for his church. The Baptist conference sent a new man to take charge of the work, but Reverend Journeyeake assisted until his death, January 3, 1894.

The other Baptist minister to whom reference was made was Rev. William Adams. He was born on November 13, 1833, on the Verdigris River, north of Claremore Mound. The Delawares were out hunting, and while they were camping, on the night the stars fell, he was born. When a baby the Delawares used to call him in their language "Shooting Star." Afterwards, when he grew up, his name was Wa leh ohp seek, which the teachers at the mission school changed to William Adams.

On June 12, 1853, he joined the First Baptist Church in Kansas and was baptized. After laboring as an efficient lay member in this church for nearly fifteen years, he was licensed to preach the gospel on February 1, 1868, and on March 14 of the same year was ordained to the full work of the gospel ministry. He felt his preparation was insufficient and was preparing to attend Rochester when difficulties, which were real obstacles, prevented, and thus he launched out into his life work. He preached in many places in Kansas and the Cherokee Nation, Indian Territory, and ardently carried the message to those who otherwise would never have heard of Christ. During his ministry of thirty years in the Territory he did not receive, all told, \$500 for his services. A noble record for so long a ministry.

He was married to Miss Kate Woodfield on September 6, 1863, by Rev. J. C. Pratt, at the Delaware Baptist mission chapel in Kansas.

He was almost 69 years of age when he died at St. Joseph's Hospital, Kansas City, Mo., on August 29, 1902.

One of his last requests was that members of his own tribe should continue the work he was obliged to leave.

At the present time the only ordained Delaware preacher is Rev. John Sarcocic, who is over 50 years old. He was born in Kansas and joined the church at the age of 18. After fifteen years' service as a layman, he was licensed to preach on September 16, 1884, by the mother Delaware church at Alluwe, Ind. T. He exercised his gifts as a licentiate for nearly four years, when, on May 21, 1888, he was ordained to the full work of the gospel ministry.

He is well and favorably known by all his tribe, among whom he breaks the bread of life. He has preached at many points besides his mother church. For many years he preached without receiving any compensation, but at present the Delawares are paying him a small salary and he is devoting much of his time to their interests.

This list would be incomplete without mention of Rev. James Ketchum, a Delaware Indian who was converted to the Methodist faith. He was born about 1819, and preached in his own language at White Church, Delaware Reservation, in Kansas, and to a portion of the Delawares in the Cherokee Nation after their removal in 1868. He was ordained to the full work of the ministry some time about 1860, and was considered one of the most eloquent orators in the Delaware tribe.

#### APPENDIX.

NOTE 1.—*The Walam Olum.*—It is quite difficult to explain, without having before us the original text, the Walam Olum, a most interesting and instructive legend of the Lemni Lenapi. But it is so extensive that it would occupy, if presented in its entirety, far more space than can be allotted to it in this little volume. The curious reader who desires to pursue his inquiries further will find it presented in full in the work of Brinton, entitled "The Lenape and their Legends," illuminated by an extensive and learned treatise upon its history, character, and meaning.

The pictographic system which the Walam Olum presented is evidently that of the Western Algonkians. These symbols are carefully and accurately reproduced in the work of Brinton above referred to.

Walam means *painted*, especially *painted red*.

*Olum* was the name of the scores, marks, or figures in use on the tally sticks or record boards.

The name *Walam Olum* may therefore be translated *Red Score*.

The manuscript from which Brinton printed the legend was a small quarto of 40 unnumbered leaves, in the handwriting of Constantine Samuel Rafinesque, to whom we owe the preservation and first translation of the Walam Olum.

These pictographs or signs were intended to keep in memory the chants that were orally recited. No people on earth hold in reverence, in life, to a higher degree, their chiefs and warriors, nor cherish their memories with greater care, than the Delawares, which is done by frequent recitals of their deeds of excellence, whether as hunters, orators, or warriors.

The chants of the Walam Olum are rhythmic and metrically arranged, as is distinguishable by the ear of the hearer, listening to the recitation, though he is not familiar with the language.

The Walam Olum is divided into five parts or chapters—the first containing 24 verses; the second, 16; the third, 20; the fourth, 64, and the fifth, 60.

It, as a whole, presents the traditions of the Delawares in regard to the Creation and Ontogeny, of the Deluge, of the passage to America, arrival in America, settlement in Ohio, from Ohio to the Atlantic States and back to Missouri.

The document is confirmatory of the traditions of the Leni Lenape, derived by the missionaries and others from distinct sources. It depicts the happy days when men lived without war or sickness, and food at all times was abundant.

I quote from the first part, by way of example, a few of the verses, fairly illustrating the manner and style of the whole work:

On the earth an extensive fog,  
 There the Great Manito was  
 At first, forever, lost in space,  
 Everywhere the Great Manito was,  
 He made the extended land and the sky;  
 He made the sun, the moon, the stars;  
 He made them all to move evenly,  
 He gave the first Mother, the Mother of Beings,  
 As they journeyed, some being strong, some rich,  
 They separated into house builders and hunters.  
 The strongest, the most united, the purest, were the hunters,

The names of their chiefs are many, scattered through the Walam Olum.

Whatever its origin, the Walam Olum is a most ingenious work, consistent with itself, and its principal statements supported from other sources.

NOTE 2.—The following is from *New Views of the Origin of the Tribes and Nations of America*, by Benjamin Smith Barton, M. D., published in 1798:

“At the head of the column of Americans I have uniformly placed the Delawares or, as they call themselves, Leni-Lenape. I have followed this arrangement because I believe we are better acquainted with the language of this tribe than with that of any other in North America, because they are acknowledged to be of more ancient establishment in the country than many others, and because their language appears to have a greater spread than that of any of the numerous nations of this great continent.

“The name by which these Indians are best known, that of Delawares, was imposed upon them by the English, because they inhabited the waters of the river Delaware. The French writers call them Loups. They, as I have already observed, call themselves Leni-Lenape, which signifies the Original People.

“The Delawares tell us that they were formerly a very powerful people, inhabiting the country to a great distance, and spreading along the seashore far east and south, etc. The great spread of their language, which is afterwards to be attended to, seems to show that this must have been the case.

“All the Indian nations known to me on this side of the Mississippi call the Delawares their grandfather, if we except the Six Nations, the Wyandots, Cochewagoes, and the southern tribes called Cheerake, Muskohge, Chikkasaw, Choktah, etc. These, it will be evident from an inspection of my vocabularies, as well as from attending to what is afterwards to be mentioned, speak languages which, though not radically different from that of the Delawares, are, however, much more distant from it than are the languages of the Chippewas, Shawnees, Miamis, Narragansets, and several others which are mentioned in my larger lists of American nations above the Senecas, who are one of the Six Nations.

“As far as I have been able to learn anything on the subject, the Delaware Nation consists of three tribes, viz, the Unamis or Wannni, the Unalachtigo or Wunalachtigo, and the Minsi or Monsees. It is certain that there had been a fourth tribe, which was small, and has passed away, leaving not a name behind. The Mahicanna or Mohicans are certainly sprung from the Delawares, but are not comprehended by these last as a branch in making up their nation.

“All the Indian nations to the southward and westward, etc., distinguish the Delawares by the name Wapanachki, or People toward the rising of the Sun. The Wyandots and the Six Nations call them their nephews, and the Delawares acknowledge them to be their uncles.”



NOTE 3.—Benjamin Smith quotes from a work entitled "A Concise Natural History of East and West Florida." New York, 1776, as follows:

"This author says he does not believe that the red men of America have come 'from the westward out of the East of Asia.' 'I am firmly of opinion,' says he, 'that God created an original man and woman in this part of the globe of different species from any in the other parts, and if perchance in the Russian dominions, there are a people of similar make and manners, is it not more natural to think they were colonies from the numerous nations on the continent of America than to imagine that from the small comparative number of those Russian subjects such a vast country should have been so numerously peopled?'

"Psychically the North American in his own state is peculiarly haughty, serious, habitually taciturn and grave, yet on occasion eloquent and naively imaginative; full of simple, childlike wonderment and trustfulness, till suspicion has been aroused; with plenty of slumbering passion, which excited becomes overmastering; in warfare stealthy, soft-paced, cunning, treacherous, with unslakable fury of revenge when the enemy is in his clutch; yet remarkably cool and stoical in outward manner, suffering with proud nonchalance the utmost extremity of fate. Altogether he is somewhat of a sad, soft, serious, passionate, pathetic personage.

"All signs then would seem to favor the theory that the native Americans are as indigenous to the country as are its peculiar fauna and flora, or, at all events, if they did originally issue from Asia, it must have been in a most remote prehistoric time." (Chamber's Encyclopedia.)

NOTE 4.—The first Hague was, according to this, in America.

In President Roosevelt's book, *The Winning of the West*, we find the following:

"The Delawares, whose fate it had been to be ever buffeted about by both the whites and the reds, had long cowered under the Iroquois terror, but they had at last shaken it off, had reasserted the superiority which tradition says they once before held, and had become a formidable and warlike race. Indeed it is curious to study how the Delawares have changed in respect to their martial prowess since the days when the whites first came in contact with them. They were then not accounted a formidable people and were not feared by any of their neighbors. By the time the Revolution broke out they had become better warriors, and during the twenty years' Indian warfare that ensued were as formidable as most of the other redskins. But when moved west of the Mississippi, instead of their spirit being broken they became more warlike than ever, and throughout the present century they have been the most renowned fighters of all the Indian peoples, and, moreover, they have been celebrated for their roving, adventurous nature. Their numbers have steadily dwindled owing to their incessant wars and to the dangerous nature of their long roamings."

Heckwelder gives the following account:

"The French landed in Canada, and it was not long before they and the now combined Five Nations, or tribes, were at war with each other, the latter not being willing to permit that the French should establish themselves in that country. At last the Iroquois, finding themselves between two fires and without any prospect of conquering the Lenape by arms, and seeing the necessity of withdrawing with their families from the shores of the St. Lawrence to the interior of the country where the French could not easily reach them, fell upon a stratagem which they flattered themselves would, if successful, secure to them not only a peace with the Lenape, but also with all the other tribes connected with them; so that they would then have but one enemy (the French) to contend with.

"This plan was very deeply laid, and was calculated to deprive the Lenape and their allies not only of their power, but of their military fame, which had exalted them above all the other Indian nations. They were to be persuaded to abstain from the use of arms and assume the station of mediators and umpires among their warlike neighbors. In the language of the Indians, they were to be made women. It must be understood that among these nations wars are never brought to an end but by the interference of the weaker sex. The men, however tired of fighting, are afraid of being considered as cowards if they should intimate a desire for peace. It is not becoming, say they, for a warrior, with the bloody weapon in his hand, to hold pacific language to his enemy. He must show to the end a determined courage and appear as ready and willing to fight as at the beginning of the contest. Neither, say they, is it proper to threaten and to sue in the same breath, to hold the peace belt in one hand and the tomahawk in the other. Men's words, as well as their actions, should be of a piece, all good or all bad, for it is a fixed maxim of theirs, which they apply on all occasions, that good can never dwell with evil. They also think that a treaty produced by threats or by force can not be binding. With these dispositions war would never have ceased among Indians until the extermination of

one or the other party, if the tender and compassionate sex had not come forward and by their moving speeches persuaded the enraged combatants to bury their hatchets and make peace with each other. On these occasions they were very eloquent. They would lament with great feeling the losses suffered on both sides, when there was not a warrior, perhaps, who had not lost a son, a brother, or a friend. They would describe the sorrows of widowed wives and, above all, of bereaved mothers. The pains of childbirth, the anxieties attending the progress of their sons from infancy to manhood, they had willingly and even cheerfully suffered; but after all these trials how cruel it was for them to see those promising youths, whom they had reared with so much care, fall victims to the rage of war and a prey to a relentless enemy; to see them slaughtered on the field of battle or put to death as prisoners by a protracted torture in the midst of the most exquisite torments. The thought of such scenes made them curse their own existence and shudder at the idea of bearing children. Then they would conjure the warriors by everything that was dear to them to take pity on the sufferings of their wives and helpless infants; to turn their faces once more toward their homes, families, and friends; to forgive the wrongs suffered from each other; to lay aside their deadly weapons and smoke together the pipe of peace and amity. They had given on both sides sufficient proof of their courage; the contending nations were alike high minded and brave, and they must now embrace as friends those whom they had learned to respect as enemies. Speeches like these seldom failed of their intended effect, and the women, by this honorable function of peacemakers, were placed in a situation by no means undignified. It would not be a disgrace, therefore. On the contrary, it would be an honor to a powerful nation, who could not be suspected of wanting either strength or courage, to assume that station by which they would be the means, and the only means, of preserving the general peace and saving the Indian race from utter extirpation.

“Such were the arguments which the artful Mengwe urged to the Lenape to make them fall into the snare which they had prepared for them. They had reflected, they said, deeply reflected on their critical situation; there remained no resource for them but that some magnanimous nation should assume the part and situation of the woman. It could not be given to a weak or contemptible tribe; such would not be listened to; but the Lenape and their allies would at once possess influence and command respect. As men they had been dreaded, as women they would be respected and honored—none would be so daring or so base as to attack or insult them; as women they would have a right to interfere in all the quarrels of other nations and to stop or prevent the effusion of Indian blood. They entreated them, therefore, to become the woman in name and in fact; to lay down their arms and all the insignia of warriors, to devote themselves to agriculture and other pacific employments, and thus become the means of preserving peace and harmony among the nations.

“The Lenape, unfortunately for themselves, listened to the voice of their enemies. They knew it was too true that the Indian nations, excited by their own unbridled passions, and not a little by their European neighbors, were in the way of total extirpation by each other's hands. They believed that the Mengwe were sincere and that their proposal had no object in view but the preservation of the Indian race. In a luckless hour they gave their consent and agreed to become women. This consent was received with great joy. A feast was prepared for the purpose of confirming and proclaiming the new order of things. With appropriate ceremonies, of which Loskiel has given a particular description, the Delawares were installed in their new functions, eloquent speeches were delivered, accompanied, as usual, with belts of wampum. The great peace belt and the chain of friendship (in the figurative language of the Indians) was laid across the shoulders of the new mediator, one end of which, it was said, was to be taken hold of by all the Indian nations and the other by the Europeans. The Lenape say that the Dutch were present at that ceremony and had no inconsiderable share in the intrigue.”

NOTE 5.—Heckewelder, in his Historical Account of the Indian Nations, referring to their mode of education, says:

“It may justly be a subject of wonder, how a nation without a written code of laws or system of jurisprudence, without any form or constitution of government, and without even a single elective or hereditary magistrate, can subsist together in peace and harmony, and in the exercise of the moral virtues; how a people can be well and effectually governed without any external authority; by the mere force of the ascendancy which men of superior minds have over those of a more ordinary stamp; by a tacit, yet universal submission to the aristocracy of experience, talents and virtue! Such, nevertheless, is the spectacle which an Indian nation exhibits to the eye of a stranger. I have been a witness to it for a long series of years, and after much observation and reflection to discover the cause of this phenomenon, I think I have

reason to be satisfied that it is in a great degree to be ascribed to the pains which the Indians take to instill at an early age honest and virtuous principles upon the minds of their children, and to the method which they pursue in educating them. This method I will not call a system; for systems are unknown to these sons of nature, who, by following alone her simple dictates, have at once discovered and follow without effort that plain, obvious path which the philosophers of Europe have been so long in search of.

“The first step that parents take toward the education of their children is to prepare them for future happiness by impressing upon their tender minds that they are indebted for their existence to a great, good, and benevolent Spirit, who not only has given them life, but has ordained them for certain great purposes. That he has given them a fertile, extensive country, well stocked with game of every kind for their subsistence, and that by one of his inferior spirits he has also sent down to them from above corn, pumpkins, squashes, beans, and other vegetables for their nourishment; all which blessings their ancestors enjoyed for a great number of ages. That this Great Spirit looks down upon the Indians, to see whether they are grateful to him and make him a due return for the many benefits he has bestowed, and, therefore, that it is their duty to show their thankfulness by worshipping him and doing that which is pleasing in his sight.

“This is in substance the first lesson taught, and from time to time repeated to the Indian children, which naturally leads them to reflect and gradually to understand that a being which hath done such things for them, and all to make them happy, must be good indeed, and that it is surely their duty to do something that will please him. They are then told that their ancestors, who received all this from the hands of the Great Spirit and lived in the enjoyment of it, must have been informed of what would be most pleasing to this good being and of the manner in which his favor could be most surely obtained, and they are directed to look up for instruction to those who know all this, to learn from them and revere them for their wisdom and the knowledge which they possess. This creates in the children a strong sentiment of respect for their elders, and a desire to follow their advice and example. Their young ambition is then excited by telling them that they were made the superiors of all other creatures, and are to have power over them; great pains are taken to make this feeling take an early root, and it becomes in fact their ruling passion through life; for no pains are spared to instill into them that by following the advice of the most admired and extolled hunter, trapper, or warrior they will at a future day acquire a degree of fame and reputation, equal to that which he possesses; that by submitting to the counsels of the aged, the chiefs, the men superior in wisdom, they may also rise to glory and be called wise men, an honorable title to which no Indian is indifferent. They are finally told that if they respect the aged and infirm and are kind and obliging to them they will be treated in the same manner when their turn comes to feel the infirmities of old age.

“When this first and most important lesson is thought to be sufficiently impressed upon children’s minds, the parents next proceed to make them sensible of the distinction between good and evil; they tell them that there are good actions and bad actions, both equally open to them to do or commit; that good acts are pleasing to the Good Spirit which gave them their existence, and that on the contrary all that is bad proceeds from the bad spirit, who has given them nothing, and who can not give them anything that is good, because he has it not, and therefore he envies them that which they have received from the Good Spirit, who is far superior to the bad one.

“This introductory lesson, if it may be so called, naturally makes them wish to know what is good and what is bad. This the parent teaches him in his own way—that is to say, in the way in which he was himself taught by his own parents. It is not the lesson of an hour or a day, it is rather a long course more of practical than of theoretical instruction, a lesson which is not repeated at stated seasons or times, but which is shown, pointed out, and demonstrated to the child, not only by those under whose immediate guardianship he is, but by the whole community, who consider themselves alike interested in the direction to be given to the rising generation.

“When this instruction is given in the form of precepts, it must not be supposed that it is done in an authoritative or forbidding tone, but, on the contrary, in the gentlest and most persuasive manner; nor is the parent’s authority ever supported by harsh or compulsive means; no whips, no punishments, no threats are even used to enforce commands or compel obedience. The child’s pride is the feeling to which an appeal is made, which proves successful in almost every instance. A father needs only to say in the presence of his children: ‘I want such a thing done; I want one of my children to go upon such an errand; let me see who is the good child that will do it!’ This word ‘good’ operates, as it were, by magic, and the children immediately vie with each other to comply with the wishes of their parent. If a father sees

an old decrepit man or woman pass by, led along by a child, he will draw the attention of his own children to the object by saying: 'What a good child that must be, which pays such attention to the aged! That child indeed looks forward to the time when it will likewise be old!' Or he will say, 'May the Great Spirit, who looks upon him, grant this child a long life!'

"In this manner of bringing up children the parents, as I have already said, are seconded by the whole community. If a child is sent from his father's dwelling to carry a dish of victuals to an aged person, all in the house will join in calling him a good child. They will ask whose child he is, and on being told will exclaim: 'What! has the Tortoise, or the Little Bear (as the father's name may be) got such a good child?' If a child is seen passing through the streets leading an old, decrepit person, the villagers will, in his hearing and to encourage all the other children who may be present to take example from him, call on one another to look on and see what a good child that must be. And so, in most instances, this method is resorted to for the purpose of instructing children to things that are good, proper, or honorable in themselves; while, on the other hand, when a child has committed a bad act, the parent will say to him: 'O! how grieved I am that my child has done this bad act! I hope he will never do so again.' This is generally effectual, particularly if said in the presence of others. The whole of the Indian plan of education tends to elevate rather than depress the mind, and by that means to make determined hunters and fearless warriors."

NOTE 6.—The position of Indian women is spoken of as follows in Brinton's "American Race:"

"The position of women in the social scheme of the American tribes has often been portrayed in darker color than the truth admits. As in one sense a chattel, she had few rights against her husband; but some she had, and as they were those of her gens, these he was forced to respect. Where maternal descent prevailed, it was she who owned the property of the pair and could control it as she listed. It passed at her death to her blood relatives, and not to his. Her children looked upon her as their parent, but esteemed their father as no relation whatever.

"The women thus made good for themselves the power of property and thus could not but compel respect. Their lives were rated at equal or greater value than a man's; instances are frequent where their voice was important in the councils of the tribe, nor was it very rare to see them attaining the dignity of head chief. That their life was toilsome is true, but the dangers were less, and its fatigues scarce greater than that of their husbands. Nor was it more onerous than that of the peasant women of Europe to-day."

NOTE 7.—This statement is found as stated in the text of the work of Benjamin Ferris, referred to before. I verified it by examining the work of DeVries, entitled "Voyages from Holland to America," translated from the Dutch by Henry C. Murphey, New York, 1853.

NOTE 8.—The colonies, when first planted in Virginia, New York, and New England, were prepared for war, and the pages of their history are mournfully stained with blood. No language can adequately describe the suffering, both of the colonists and the natives, that followed this anti-Christian course. William Penn and his colony came to Pennsylvania unarmed and defenseless, wholly unprepared for war. And he and his people lived in harmony and peace with the natives as long as the government remained in their hands, which was about seventy years. (Ferris's Delaware Settlements, note p. 37.)

NOTE 9.—This Weekweley is the same referred to in the Lancaster Treaty in May, 1757, whose death is assigned by the deputies of the Five Nations as one of the causes of the present difference between the Delawares and English.

NOTE 10.—Mr. Logan was the secretary and the proprietaries' principal agent or commissioner for land affairs during nearly forty years.

NOTE 11.—The value of these goods was about £10, or one year's quitrent of 20,000 acres of land at the old rent, or 5,000 acres at the new.

NOTE 12.—When Col. John Armstrong surrounded the Cattanyan town, on the Allegheny River, Captain Jacobs, a Delaware chief, with some warriors, took possession of a house, defended themselves for some time, and killed a number of our men. As Jacobs could speak English, our people called on him to surrender. He said that he and his men were warriors, and they would all fight while life remained. He was again told that they should be well used if they would only surrender; and if not, the house should be burned down over their heads. Jacobs replied, he could eat fire; and when the house was in a flame, he, and they that were with him, came out in a fighting position, and were all killed. As they are a sharp, active kind of people, and war is their principal study, in this they have arrived at considerable perfection. We may learn of the Indians what is useful and laudable, and at the same time lay aside

their barbarous proceedings. It is much to be lamented that some of our frontier riflemen are too prone to imitate them in their inhumanity. During the British war a considerable number of men from below Fort Pitt crossed the Ohio and marched into a town of friendly Indians, chiefly Delawares, who professed the Moravian religion. As the Indians apprehended no danger, they neither lifted arms nor fled. After these riflemen were some time in the town, and the Indians altogether in their power, in cool blood they massacred the whole town, without distinction of age or sex. This was an act of barbarity beyond anything I ever knew to be committed by the savages themselves.

NOTE 13.—From Hildreth's *Pioneer History* we learn that in June, 1776, William Wilson was sent by Mr. George Morgan, Agent for Indian Affairs in the Middle Department, to the Shawnees to prevent their going to Detroit to a treaty until he arrived there and spoke to them.

Mr. Wilson reported, among other things, that Captain White Eyes, at his request, readily consented to accompany him to a Wyandotte village opposite Detroit, where he met the chiefs and invited them to a treaty to be held at Pittsburg the 2d of September.

Captain White Eyes then spoke to them. He assured them that the Big Knife desired nothing more than to live in peace with all the Indians. His speech had an excellent effect, and after full deliberation they assured Mr. Wilson they would use all their influence with the other tribes to preserve peace.

The Indians arranged a meeting for Mr. Wilson with the governor of Detroit. Mr. Wilson explained the object of his visit to the governor and delivered his message in writing.

The governor then spoke to the Indians as follows:

“Children, I am your father and you are my children. I have always your good at heart. I am sent here to represent the Great King over the waters and to take care of you. Those people from whom you have received that message are enemies and traitors to my King; and before I would take one of them by the hand I would suffer my right hand to be cut off. When the Great King is pleased to make peace with his rebellious children in this big island, I will then give my assistance in making peace between them and the Indians, and not before.”

With that, he tore the speech and cut the belt to pieces which had been delivered to him, and contemptuously strewed it about the council house.

The governor told White Eyes he knew his character well, and so did all the nations present. He ordered him to leave Detroit before the sun set, as he regarded his head.

White Eyes made no reply at that time, but after we had left the place he said, “The governor is a fool.” He did not know what he scolded him for; that he had never done him any injury nor any other white man, since he had made peace with them; nor ever would unless they injured him; that if he had a mind to join the Buckskins, he would soon make him tremble for his head, and if he joined either side, it would be the Buckskins. The governor, seeing White Eyes afterwards, he having unavoidably delayed his departure, threatened to put him in irons and send him to Niagara if he did not leave Detroit immediately.

Captain White Eyes was not only wise in council, brave in battle, influential with his own nation, but respected for his sterling qualities by all who had come in contact with him, and it is quite possible that the rudeness of manner and offensiveness of speech of the haughty English governor may have decided him to cast his fortunes with the colonies in the ensuing war.

It was only some two years before (1774) that White Eyes had participated, with the great war chief, Cornstalk, in the battle of Point Pleasant, on the frontier of Virginia, in which the whites lost some 40 to 75 killed and 140 wounded, the Indians' loss never having been disclosed.

NOTE 14.—Another Delaware chief, who lived at the same time with White Eyes, was Captain Pipe, who belonged to the Wolf tribe. He secretly favored the British on the breaking out of the Revolution, but his plans for inducing his nation to take up arms against the Americans were for some time defeated by the vigilance of White Eyes; but the Delawares finally became divided, most of them, under Captain Pipe, taking part with the British. From a speech which Captain Pipe made to the British commander at Detroit, it is believed that he regretted the course that he had taken, perceiving that the Indians, in taking part in the quarrels of their white neighbors, had nothing to gain and much to lose. He remarked that the cause for which he was fighting was not the cause of the Indians—that after he had taken up the hatchet he did not do with it all that he might have done, for his heart failed him—he had distinguished between the innocent and the guilty—he had spared some, and hoped the British would not destroy what he had saved.” (From *American History*, by Marcus Willson.)

NOTE 15.—“It had early been the settled policy of Congress, and which was continued through this unnatural contest between the mother country and the colonists, to persuade the Indians to remain neutral and not take up the hatchet on either side. It was a war in which they had no concern, and they were desired to keep quiet. The British Government, however, pursued a very different course, and urged them, on all occasions, to side with them and assist in subduing their rebellious children. For this purpose they supplied them with arms and ammunition and paid them a bounty on scalps, one of the most cruel and inhuman kinds of traffic ever entered into by a civilized people.

“The main object of all the treaties with the Indians by the United States, during the war, was to keep them quiet, and persuade them not to molest the border inhabitants. For this purpose they received many presents at the close of those treaties, of clothing, blankets, etc., but little or no ammunition or arms.

“The British, on the other hand, supplied them with all these articles, in fourfold quantities, for the purpose of attaching them to their interests, while the Congress, from their poverty and their absolute inability to furnish them with foreign goods in large amounts, rather sunk in the estimation of the Indians. They had the shrewdness to perceive the poverty of the United States when compared with the wealth and grandeur of their old father, the King of Great Britain, and during the whole contest acted either openly or covertly on that side. A large portion of the Delaware Indians, in addition to all those who had been converted to Christianity by the agency of the Moravian missionaries, continued to be steadfast in their friendship to the Americans, and on all occasions these Christian Indians sent timely notice, if in their power, of the marching of war parties to attack the border inhabitants of Pennsylvania and Virginia.

“These friendly acts were, no doubt, promoted by the kind offices of the missionaries Zeisberger and Heckewelder, whose names will occasionally appear in the course of these extracts. Their friendship for the United States drew upon them the ill-will of all the heathen tribes, which finally led to open violence, and the Christian Indians were forcibly removed to Sandusky, where they suffered greatly from starvation. They also fell under the displeasure of the frontier inhabitants of western Pennsylvania and Virginia, who accused them of harboring the war parties of the hostile Indians when they returned from their murderous incursions into the settlements, and secreting for them their stolen goods. Thus placed between two fires, they finally fell a sacrifice to an exasperated party of whites, for whom they had ever professed a sincere friendship, and were destroyed at the massacre of Gnadenbitten by the hands of those they had never injured.” (From Hildreth's Pioneer History.)

NOTE 16.—The following is from London's Indian Narratives:

“I have often heard the British officers call the Indians the undisciplined savages, which is a capital mistake, as they have all the essentials of discipline. They are under good command and punctual in obeying orders; they can act in concert, and when their officers lay a plan and give orders, they will cheerfully unite in putting all their directions into immediate execution; and by each man observing the motion or movement of his right-hand companion, they can communicate the motion from right to left, and march abreast in concert, and in scattered order, though the line may be more than a mile long, and continue, if occasion requires, for a considerable distance without disorder or confusion. They can perform various necessary maneuvers, either slowly or as fast as they can run; they can form a circle or semi-circle. The circle they make use of in order to surround their enemy, and the semi-circle if the enemy has a river on one side of him. They can also form a large hollow square, face out and take trees; this they do if their enemies are about surrounding them, to prevent being shot from either side of the tree. When they go into battle they are not loaded or encumbered with many clothes, as they commonly fight naked, save only a breech cloth, leggings, and moccasins. There is no such thing as corporal punishment used in order to bring them under such good discipline; degrading is the only chastisement, and they are so unanimous in this that it effectually answers the purpose. Their officers plan, order, and conduct matters until they are brought into action, and then each man is to fight as though he was to gain the battle himself. General orders are commonly given in time of battle, either to advance or retreat, and is done by a shout or yell, which is well understood, and then they retreat or advance in concert. They are generally well equipped and exceedingly expert and active in the use of arms. Could it be supposed that undisciplined troops could defeat Generals Braddock, Grant, etc.? It may be said by some that the French were also engaged in this war; true, they were; yet I know it was the Indians that laid the plan, and with small assistance put it into execution. The Indians had no aid from the French or any other power when they besieged Fort Pitt in the year 1763, and cut off the communication for a considerable time between

that post and Fort Loudon, and would have defeated General Bouquet's army (who were on the way to raise the siege), had it not been for the assistance of the Virginia volunteers. They had no British troops with them when they defeated Colonel Crawford, near the Sandusky, in the time of the American war with Great Britain, or when they defeated Colonel Loughrie, on the Ohio, near the Miami, on his way to meet General Clarke. This was also in the time of the British war. It was the Indians alone that defeated Colonel Todd, in Kentucky, near the Blue Licks, in the year 1782, and Colonel Harmar, betwixt the Ohio and Lake Erie, in the year 1790, and General St. Clair in the year 1791; and it is said that there were more of our men killed at this defeat than there were in any one battle during our contest with Great Britain. They had no aid when they fought even the Virginia riflemen almost a whole day at the Great Kanawha in the year 1774, and when they found they could not prevail against the Virginians, they made a most artful retreat. Notwithstanding they had the Ohio to cross, some continued firing whilst others were crossing the river. In this manner they proceeded until they all got over before the Virginians knew that they had retreated, and in this retreat they carried off all their wounded. In most of the foregoing defeats they fought with an inferior number, though in this I believe it was not the case.

"Nothing can be more unjustly represented than the different accounts we have had of their number from time to time, both by their own computations and that of the British. While I was among them I saw the account of the number that they in those parts gave to the French, and kept it by me. When they, in their own council house, were taking an account of their number with a piece of bark newly stripped and a small stick, which answered the end of a slate and pencil, I took an account of the different nations and tribes, which I added together, and found there were not half the number which they had given to the French; and though they were then their allies and lived among them, it was not easy finding out the deception, as they were a wandering set and some of them almost always in the woods hunting. I asked one of the chiefs what was their reason for making such different returns. He said it was for political reasons, in order to obtain greater presents from the French by telling them they could not divide such and such quantities of goods among so many.

"In the year of General Bouquet's last campaign, 1764, I saw the official return made by the British officers of the number of Indians that were in arms against us that year, which amounted to thirty thousand. As I was then a lieutenant in the British service, I told them I was of opinion that there were not above one thousand in arms against us, as they were divided by Broadstreet's army being then at Lake Erie. The British officers hooted at me and said they could not make England sensible of the difficulties they labored under in fighting them, as England expected that their troops could fight the undisciplined savages in America five to one, as they did the East Indians, and therefore my report would not answer their purpose, as they could not give an honorable account of the war but by augmenting their number. I am of opinion that from Braddock's war until the present time there never were more than three thousand Indians at any time in arms against us west of Fort Pitt, and frequently not half that number. According to the Indians' own accounts, during the whole of Braddock's war, or from 1755 till 1758, they killed or took fifty of our people for one that they lost. In the war that commenced in the year 1763 they killed comparatively few of our people and lost more of theirs, as the frontiers (especially the Virginians) had learned something of their method of war, yet they in this war, according to their own accounts (which I believe to be true), killed or took ten of our people for one they lost.

"Let us now take a view of the blood and treasure that was spent in opposing, comparatively, a few Indian warriors, with only some assistance from the French, the first four years of the war. Additional to the amazing destruction and slaughter that the frontiers sustained, from James River to Susquehanna, and about 30 miles broad, the following campaigns were also carried on against the Indians: General Braddock's, in the year 1755; Colonel Armstrong's against the Cattawyan town, on the Allegheny, 1757; General Forbes's, in 1758; General Stanwick's, in 1759; General Monkton's, in 1760; Colonel Bouquet's, in 1761 and 1763, when he fought the battle of Brushy Run, and lost about 400 men; but, by the assistance of Virginia volunteers, drove the Indians; Colonel Armstrong's, up the west branch of Susquehanna, in 1763; General Broadstreet's, up Lake Erie, in 1764; General Bouquet's against the Indians at Muskingum, in 1764; Lord Dunmore's, in 1774; General McIntosh's, in 1778; Colonel Crawford's, shortly after his; General Clarke's, in 1778-1780; Colonel Bowman's, in 1779; General Clarke's, in 1782; against the Wabash, in 1786; General Logan's, against the Shawnees, in 1786; General Wilkinson's, in —; Colonel Harmar's, in 1790, and General St. Clair's, in 1791, which, in all, are twenty-two campaigns, besides smaller expeditions—such as the French Creek

expedition, Colonels Edward's, Loughrie's, etc. All these were exclusive of the number of men that were internally employed as scouting parties, and in erecting forts, guarding stations, etc. When we take the foregoing occurrences into consideration, may we not reasonably conclude that they are the best disciplined troops in the known world? Is it not the best discipline that has the greatest tendency to annoy the enemy and save their own men? I apprehend that the Indian discipline is as well calculated to answer the purpose in the woods of America as the British discipline in Flanders; and British discipline in the woods is the way to have men slaughtered with scarcely any chance of defending themselves.

"Let us take a view of the benefits we have received by what little we have learned of their art of war, which cost us dear, and the loss we have sustained for want of it, and then see if it will not be well worth our while to retain what we have, and also to endeavor to improve in this necessary branch of business. Though we have made considerable proficiency in this line, and in some respects outdo them, viz, as marksmen, and in cutting our rifles, and keeping them in good order, yet I apprehend we are far behind in their manœuvres, or in being able to surprise or to prevent a surprise. May we not conclude that the progress we had made in their art of war contributed considerably toward our success, in various respects, when contending with Great Britain for liberty? Had the British King attempted to enslave us before Braddock's war, in all probability he might readily have done it, because except the New Englanders, who had formerly been engaged in war with the Indians, we were unacquainted with any kind of war; but after fighting such a subtle and barbarous enemy as the Indians, we were not terrified at the approach of British redcoats. Was not Burgoyne's defeat accomplished, in some measure, by the Indian mode of fighting? And did not General Morgan's riflemen, and many others, fight with greater success in consequence of what they had learned of their art of war? Kentucky would not have been settled at the time it was had the Virginians been altogether ignorant of this method of war.

"In Braddock's war, the frontiers were laid waste for above three hundred miles long, and generally about thirty broad, excepting some that were living in forts, and many hundreds, or perhaps thousands, killed or made captives, and horses and all kinds of property carried off; but in the next Indian war, though we had the same Indians to cope with, the frontiers almost all stood their ground, because they were by this time, in some measure, acquainted with their manœuvres; and the want of this in the first war was the cause of the loss of many hundreds of our citizens and much treasure.

"Though large volumes have been written on morality, yet it may be all summed up in saying, do as you would wish to be done by, so the Indians sum up the art of war in the following manner:

"The business of the private warriors is to be under command, or punctually to obey orders; to learn to march abreast in scattered order, so as to be in readiness to surround the enemy, or to prevent being surrounded; to be good marksmen, and active in the use of arms; to practice running; to learn to endure hunger or hardships with patience and fortitude; to tell the truth at all times to their officers, but more especially when sent out to spy the enemy.

"*Concerning officers.*—They say that it would be absurd to appoint a man an officer whose skill and courage had never been tried; that all officers should be advanced only according to merit; that no one man should have the absolute command of an army; that a council of officers are to determine when and how an attack is to be made; that it is the business of the officers to lay plans to take every advantage of the enemy, to ambush and surprise them, and to prevent being ambushed and surprised themselves; it is the duty of officers to prepare and deliver speeches to the men in order to animate and encourage them, and on the march to prevent the men, at any time, from getting into a huddle, because if the enemy should surround them in this position, they would be exposed to the enemy's fire. It is likewise their business at all times to endeavor to annoy their enemy and save their own men, and therefore ought never to bring on an attack without considerable advantage, or without what appeared to them the sure prospect of victory, and that with the loss of few men; and if at any time they should be mistaken in this, and are like to lose many men by gaining the victory, it is their duty to retreat and wait for a better opportunity of defeating their enemy without the danger of losing so many men. Their conduct proves that they act upon these principles; therefore it is that from Braddock's war to the present time they have seldom ever made an unsuccessful attack. The battle at the mouth of the Great Kanawha is the greatest instance of this; and even then, though the Indians killed about 3 for 1 they lost, yet they retreated. The loss of the Virginians in this action was 70 killed, and the same number wounded. The Indians lost 20 killed on the field, and 8, who died afterwards of



their wounds. This was the greatest loss of men that I ever knew the Indians to sustain in any one battle. They will commonly retreat if their men are falling fast; they will not stand cutting like the Highlanders or other British troops, but this proceeds from a compliance with their rules of war rather than cowardice. If they are surrounded they will fight while there is a man of them alive rather than surrender. \* \* \*

"Why have we not made greater proficiency in the Indian art of war? Is it because we are too proud to imitate them, even though it should be a means of preserving the lives of many of our citizens? No! We are not above borrowing language from them, such as hominy, pone, tomahawk, etc., which is of little or no use to us. I apprehend that the reasons why we have not improved more in this respect are as follows: No important acquisition is to be obtained but by attention and diligence; and as it is easier to learn to move and act in concert, in close order, in the open plain, than to act in concert in scattered order in the woods, so it is easier to learn our discipline than the Indian manœuvres. They train up their boys in the art of war from the time they are 12 or 14 years of age; whereas the principal chance our people had of learning was by observing their manœuvres when in action against us. I have been long astonished that no one has written upon this important subject, as their art of war would not only be of use to us in case of another rupture with them, but were only part of our men taught this art, accompanied with our continental discipline, I think no European power, after trial, would venture to show its head in the American woods.

"If what I have wrote should meet the approbation of my countrymen, perhaps I may publish more upon this subject in a future edition."

NOTE 17.—The Seminole war lasted seven years. The whole available force of the Regular Army was engaged in the combat. Yet General Scott, then commanding (April 30, 1836), wrote: I am more than ever persuaded that the whole force of the enemy, including negroes, does not exceed 1,200 fighting men. In addition to the whole force of the Regular Army, a portion of the Navy, and in the aggregate during the war more than 20,000 volunteers were brought into service. This one single Indian war cost upward of \$40,000,000.

Delaware, Creek, and Choctaw Indians participated as our allies in this war. Our losses aggregated more than 3,000 men. The losses of the Seminole are not known. So stated by Geo. W. Manypenny.

From Sprague's History of the Florida War, page 102, we find that there served in the Florida war, in 1837 and 1838, 178 Delawares and Shawnee, including 4 officers. On another page we find that, while some of the Indian allies shirked going to battle with the Seminole, the Delawares were ready for the fray and went into the fight.

#### INDIAN TREATIES IN COLONIAL TIMES.

We find in "An inquiry into the causes of the alienation of the Delawares and Shawnee from the British interests and into the measures taken for recovery of their friendship," a book printed in London, 1759, a list of the Indian treaties and other records:

- Treaty between Governor Keith and the Indians at Conestogo, April, 1722.
- Governor Gordon and the Five Nations at Philadelphia, July, 1727.
- Minutes of council on Indian affairs, April 18, 1728.
- Treaty between Governor Gordon and the Conestogoes, Delawares, Shawanese, and Canawese Indians, May and June, 1728.
- Ditto and Five Nations, October 10, 1728.
- Ditto and ditto, May, 1729.
- Treaty between Governor Gordon, in the presence of Thomas Penn, esq., and the Shawanese, September, 1732.
- Ditto and the Six Nations, August and September, 1732.
- President Logan and ditto, 1736.
- Deed of Confirmation of the Walking Purchase, 1737, containing recitals of several treaties or meetings, 1733 to 1737.
- Minutes of Council relating to Indian Conferences, 1741, not delivered to the Assembly till 1742.
- Treaty between Governor Thomas and Six Nations, July, 1742.
- Treaty held at Lancaster with the Six Nations, governors of Pennsylvania, Virginia, and Maryland, June, 1744.
- Governor Thomas and Indians, at Philadelphia, October, 1744.
- Treaties held at Albany with Six Nations, government of New York, Massachusetts, Connecticut, and Pennsylvania, October, 1745.
- At Albany with ditto, governor of New York, September, 1746.

Notes of assembly of Pennsylvania, Volume III. Sundry minutes on Indian affairs, 1747-48.

Treaty held at Philadelphia between Governor Hamilton and the Six Nations, 1749. C. Weiser's letters to the secretary, and Governor Hamilton's messages to the assembly before and after the said treaty, 1749.

Secretary Peter's report to Governor Hamilton of his proceedings at Juniata, 1750. C. Weiser (Indian interpreter); his journal of proceedings at Albany, 1751.

Treaty held at Carlisle between the government of Pennsylvania and the Ohio Indians, 1753.

Private minutes of proceedings at Albany treaty, and deed of Indian purchase, 1754.

C. Weiser's journal of his conferences with Indians at Aughwick, 1754.

Conferences between Governor Morris and Indians at Philadelphia, August, 1755.

Indian intelligence obtained in confederance with the half king, Scarroyady, and others, at several times, 1754-55.

Conferences between Governor Morris and Scarroyady, etc., March and April, 1756.

Between some Quakers and Scarroyady, April, 1756.

Between Governor Morris and Captain Newcastle at Jagrea, June, 1756.

Between ditto and ditto, July, 1756.

Minutes of conferences between Governor Morris and Teedyuscung, king of the Delawares, July, 1756.

Ditto between Governor Denny and ditto at Easton, November, 1756.

Minutes of conferences between ditto and the Six Nations at Lancaster, May, 1757.

Between ditto and Teedyuscung, and others, at Easton, August, 1757.

Conferences and treaties between Sir William Johnson and the Six Nations, Shawanese, and others, from December, 1755, to February, 1756. London, printed.

Sir William Johnson's treaty with the Shawanese and Delaware Indians, July, 1756. Published at New York, 1757.

Treaty with Shawanese, Nantieokes, and Mohickanders, April, 1757. Published at New York.

Thirteen Indian deeds taken from the public records:

2d October, 1685. For the lands from Duck Creek to Chester Creek.

12th January, 1696. For the lands on both sides of Susquehannah, lately purchased by Thomas Dungan of the Seneca and Susquehannah Indians.

5th July, 1697. For the land from Pennopec Creek to Neshameny.

13th Sept., 1700. For the lands on both sides of Susquehannah, so far as the Susquehannah Indians have a right to claim, confirming the grant formerly made by Col. Dungan to William Penn.

23d April, 1701. Articles of friendship and agreement between William Penn and the Susquehannah, Shawonah, and North Patomack Indians.

17th Sept., 1718. Sassoonan, king of the Delawares, and his six counsellors, to William Penn, their deed of confirmation of all former sales of lands from Duck Creek to the mountains on this side Lechay.

11th October, 1736. Release of all the lands on Susquehannah to the southward of the Kittochtinny Hills from the chiefs of the Six Nations to John, Thomas, and Richard Penn, esquires.

25th October, 1736. Release from some of the chiefs of the Six Nations (parties to the last-mentioned deed) of all their right to the lands in the province of Pennsylvania, southward of the Kittochtinny Hills. On this deed appears an indorsement made at Albany, 9th July, 1754, confirming the deed and promising to sell no lands within these limits to any person save Thomas and Richard Penn, esquires.

25th August, 1737. A deed of confirmation of a purchase therein recited to have been formerly made of so much land as a man could go over in a day and half, beginning at Pitcock's Falls on Delaware, thence westward to Neshameny, and to the head of the most westerly branch of the said creek, and thence to the end of the Walk, etc.

23d July, 1748. Articles of friendship between the chiefs of the Tweghtwees and the government of Pennsylvania.

22d August, 1749. Release of the chiefs of the Six Nations of lands between the Kittochtinny Mountains and Maghoiroy on Susquehannah, and the said mountains and Lechawachsein on Delaware.

6th July, 1754. Release from the chiefs of the Six Nations of lands on the west side of Susquehannah, beginning at the Kittochtinny Hills, and thence to a creek northward of the Kittochtinny Hills, called Kayamondinagh, thence northwest and by west to the western bounds of Pennsylvania, thence to the Maryland line, thence by said line to the south side of the Kittochtinny Hills, thence by the said south side of the said hills to the place of beginning.

9th July, 1754. An indorsement made by some of the parties to the said deed, promising to sell no lands within the limits of Pennsylvania to any but the Penns.

A paper said to be a copy of a deed dated 28th of 6th month, 1686, and indorsed copy of the last Indian purchase. To give it some credit, it has been confidently asserted that the said indorsement is of the handwriting of William Penn, but on its being produced at Easton and examined, it appeared clearly, and was confessed by the secretary and several others acquainted with Mr. Penn's handwriting not to be his, nor indeed is it like it. Its chief mark of credit is that it appears to be an ancient paper; but there is no certificate of its being a copy, nor was it ever recorded. As the name of Joseph Wood is put as one of the evidences, and as a person of that name declared at Pensbury, 1734, he was present at an Indian treaty in 1686, and it is not known there was any other of the name, it seems extraordinary, if this be a genuine copy, that he was not then called upon to make some proof of it.

"There is a considerable number of Indian deeds in the hands of the secretary for lands purchased at several times, and particularly for the lands on the branches of Schuylkil above Tulpyhoekin, purchased in 1732 and 1733, which it was particularly desired might be produced, but they will neither record nor produce them. There is reason to believe the said last-mentioned deed would particularly militate against the subsequent proceedings from 1733 to 1737."

## A LIST OF TREATIES BETWEEN THE UNITED STATES AND THE DELAWARE INDIANS.

Treaty of 1778 (7 Stat. L., 43): Signed by White Eyes, The Pipe, John Kill Buck.

Treaty of 1785 (7 Stat. L., 46): Signed by Wingennum.

Treaty of 1789 (7 Stat. L., 28): Signed by Captain Pipe, Wingennond, Pekelan, Teataway.

Treaty of 1803 (7 Stat. L., 74): Signed by Teta Buxike, Bukongehelas, Hockingpomskenn, Keechkawhanund.

Treaty of 1804 (7 Stat. L., 81): Signed by Jeta Buxika, Bokongehelas, Alimce or Geo. White Eyes, Hockingpomskann, Tomagnee or The Beaver.

Treaty of July, 1805 (7 Stat. L., 87): Signed by Paalmehelot, Pamoxet or Armstrong, Pappellelond or Beaver Hat.

Treaty of August, 1805 (7 Stat. L., 94): Signed by Hocking Pomaskan, Hecklawhend and Wm. Anderson, Alline or White Eyes, Tomagoe or Beaver.

Treaty of 1809 (7 Stat. L., 113): Signed by Anderson, for Hockingpomskan, who is absent; Anderson, Petchekappon, The Beaver, Captain Kill Buck.

Treaty of 1814 (7 Stat. L., 118): Signed by Taimunshah or Charles, Timdraka or Jno. Bolele, Eroneniarah or Shroneseh; Kicktohenina or Captain Anderson, Lemotennuckques or James Nanticoke; Laopommiehe or Baube, Joon Queake or John Queake, Kill Buck, Neachoomingd, Montgomery Montawe, Captain Buck; Hooque or Mole, Captain White Eyes, Captain Pipe, McDaniel, Captain Snap.

Treaty of 1815 (7 Stat. L., 131): Signed by Toctowayning or Anderson, Lamahitanoquez, Matahoopan, Aahcappan or The Buck, Jim Killbuck, Captain Beaver, McDonald.

Treaty of 1817 (7 Stat. L., 160): Signed by Kithtawheland or Anderson, Punchuck or Captain Beaver, Tahunqueecoppi or Captain Pipe, Clamatockis, Awealka or Whirlwind.

Treaty of 1818 (7 Stat. L., 188): Signed by Kithteceland or Anderson, Lapahnih or Big Bear, James Nanticoke, Apacabund or White Eyes, Captain Killbuck, The Beaver, Netahopuna, Captain Tunis, Captain Ketchum, The Cat, Ben Beaver, The War Mallet, Captain Caghkoo, The Buck, Petchenanadas, John Quake, Quenaghtoothmait, Little Jack.

Treaty of August, 1829 (7 Stat. L., 326): Signed by Captain Pipe, William Matacur, Captain Wolf, Eli Pipe, Solomon Joneycake, Joseph Armstrong, George Williams.

Treaty of September, 1829 (7 Stat. L., 327): Signed by William Anderson, Captain Paterson, Poochie or The Cat, Jomxy Quick, John Gray, George Guiry, Captain Beaver, Naumotauxien, Little Jack, Captain Pipe, Big Island, Captain Suwanock, white man. Signed in presence of James Connor, Delaware interpreter.

These last six chiefs and warriors having been deputed to examine the country, have approved of it, and signed their names at council camp in the fork of the Kansas and Missouri River, on the 19th October, 1829: Naocheeapauie, Nungaitautone, James Gray, Sam Street, Aupaneek, Outhteekawshawat.

Treaty of 1832 (7 Stat. L., 397): Signed by Meshayquowha, Nahkomin, Tawhelan, Captain Ketchum, Nonondaqomon.

Treaty of July, 1848 (9 Stat. L., 337): Signed by Nahkoomer, Captain Ketchum, Captain Suavec, Jackenduthen, Sankocksa, Cockitowa, Sasarsittoua, Pempscab, Nahquenon.

Treaty of May 6, 1854 (10 Stat. L., 1048): Signed by Sarcoxy, Neconhecond, Kockatowha, Quacornowha or James Segondyne, Queshatowha, John Ketchum, Nesha-

panacumin, Charles Journeycake, Pondoxy or George Bullette, Koekkoekquas or James Ketchum, Ahlabachick or James Connor.

Treaty of May 30, 1860 (12 Stat. L., 1129): Signed by John Connor, Head Chief; Neconhecon, Chief of Wolf band; Sarcoxie, Chief of Turtle band; Rockatowha, Chief of Turkey band; James Connor, delegate.

Treaty of July 2, 1861 (12 Stat. L., 1177): Signed by John Connor, Head Chief; Neconhecon, Chief of Wolf band; Sarcoxie, Chief of Turtle band; James Connor, delegate; Charles Journeycake.

Treaty of July 4, 1866 (14 Stat. L., 793): Signed by John Connor, Head Chief; Captain Sarcoxie, Assistant Chief; Charles Journeycake, Assistant Chief; James Ketchum, James Connor, Andrew Miller, John Sarcoxie, counselors.

#### AGREEMENT WITH CHEROKEES.

Treaty of April 8, 1867: Signed by John Connor, Principal Chief; Charles Journeycake, Isaac Journeycake, John Sarcoxie, Delaware delegates.

NOTE 18.—From Heckewelder's Transactions of the Historical and Literary Committee of the American Philosophical Society we get the following:

"The nation whom another tribe calls grandfather is certainly the head of the family to which they both belong. At his door burns the 'great national council fire,' or, in other words, at the place where he resides with his counselors, as the great or supreme chief of the national family, the heads of the tribes in the connection occasionally assemble to deliberate on their common interests; any tribe may have a council fire of its own, but can not dictate to the other tribes, nor compel any of them to take up the hatchet against an enemy, neither can they conclude a peace for the whole; this power entirely rests with the great national chief, who presides at the council fire of their grandfather.

"Indian nations or tribes connected with each other are not always connected by blood or descended from the same original stock. Some are admitted into the connection by adoption. Such are the Tuscaroras among the Six Nations; such are the Cherokees among the Lemni Lenape. Thus, in the year 1779, a deputation of fourteen men came from the Cherokee nation to the council fire of the Delawares, to condole with their grandfather on the loss of their head chief. There are tribes on the other hand, who have wandered far from the habitations of those connected with them by blood or relationship. It is certain that they can no longer be benefited by the general council fire. They, therefore, become a people by themselves, and pass with us for a separate nation if they only have a name; nevertheless (if I am rightly informed), they well know to what stock or nation they originally belonged, and if questioned on that subject will give correct answers. It is therefore very important to make these inquiries of any tribe or nation that a traveler may find himself among. The analogy of languages is the best and most unequivocal sign of connection between Indians tribes; yet the absence of that indication should not always be relied upon.

"It may not be improper also to mention in this place that the purity or correctness with which a language is spoken, will greatly help to discover who is the head of the national family. For nowhere is the language so much cultivated as in the vicinity of the great national council fire, where the orators have the best opportunity of displaying their talents. Thus the purest and most elegant dialect of the Lenape language is that of the Unami or Turtle tribe."

#### LAWS OF THE DELAWARE NATION OF INDIANS.

[Adopted July 21, A. D. 1866.]

The chiefs and councilors of the Delaware tribe of Indians convened at the council house, on the reservation of said tribe, adopted July 21, 1866, the following laws, to be amended as they think proper:

#### ARTICLE I.

SECTION 1. A national jail shall be built on the public grounds, upon which the council house is now situated.

SEC. 2. Any person who shall steal any horse, mule, ass, or cattle of any kind shall be punished as follows: For the first offense the property of the offender shall be sold by the sheriff, to pay the owner of the animal stolen the price of said animal, and all costs he may sustain in consequence of such theft. But if the offender has no property, or if his property be insufficient to pay for the animal stolen, so much of his annuity shall be retained as may be necessary to pay the owner of said animal,

as above directed, and no relative of said offender shall be permitted to assist him in paying the penalties of said theft. For the second offense the thief shall be sent to jail for thirty-five days, and shall pay all costs and damages the owner may sustain on account of said theft. For the third offense the thief shall be confined in jail three months, and shall pay all costs and damages, as above provided.

SEC. 3. If any person shall steal a horse beyond the limits of the reserve, and bring it within the limits thereof, it shall be lawful for the owner to pursue and reclaim the same upon presenting satisfactory proof of ownership, and, if necessary, receive the assistance of the officers of the Delaware Nation; *And it is further provided*, That such officials as may from time to time be clothed with power by the United States agent may pursue such offender either within or without the limits of the reserve.

SEC. 4. Whoever shall ride any horse without the consent of the owner thereof shall for the first offense pay the sum of ten dollars for each day and night that he may keep the said animal, and for the second offense shall be confined in jail for the term of twenty-one days, besides paying a fine of ten dollars.

SEC. 5. Whoever shall reclaim and return any such animal to the rightful owner, other than the wrongdoer, as in the last section mentioned, shall receive therefor the sum of two and fifty-hundredths dollars.

SEC. 6. In all cases of theft the person or persons convicted of such theft shall be adjudged to pay all costs and damages resulting therefrom; and in case of the final loss of any animal stolen, then the offender shall pay the price thereof, in addition to the costs and damages, as provided in a previous section.

SEC. 7. Whoever shall steal any swine or sheep shall for the first offense be fined the sum of \$15, \$10 of which shall be paid to the owner of the sheep or swine taken and \$5 to the witness of the theft; for the second offense the thief shall, in addition to the above penalty, be confined in jail for twenty-eight days, and for the third offense the thief shall be confined four weeks in jail, and then receive a trial, and bear such punishment as may be adjudged upon such trial.

SEC. 8. Whoever shall steal a fowl of any description shall for the first offense pay to the owner of such animal the sum of \$5; for the second offense, in addition to the above penalty, the thief shall be confined in jail for twenty-one days. The witness by whom such theft shall be proven shall be entitled to receive such reasonable compensation as may be allowed to him, to be paid by the offender.

SEC. 9. A lawful fence shall be eight rails high, well staked and ridged. If any animal shall break through or over a lawful fence, as above defined, and do any damage, the owner of the inclosure shall give notice thereof to the owner of such animal, without injury to the animal. The owner of such animal shall therefore take care of the same and prevent his doing damage; but should he neglect or refuse so to do, the animal itself shall be sold to pay for the damage it may have done; but if the premises be not inclosed by a lawful fence, as above defined, the owner of the inclosure shall receive no damages; but should he injure any animal getting into such inclosure, shall pay for any damage he may do such animal.

SEC. 10. Every owner of stock shall have his or her brand or mark put on such stock, and a description of the brand or mark of every person in the tribe shall be recorded by the national clerk.

#### ARTICLE II.

SECTION 1. Whoever shall maliciously set fire to a house shall for the first offense pay to the owner of such house all damages which he may sustain in consequence of such fire; and, in addition thereto, for the second offense shall be confined in jail for the term of twenty-one days.

SEC. 2. Should human life be sacrificed in consequence of any such fire, the person setting fire as aforesaid shall suffer death by hanging.

SEC. 3. It shall be unlawful for any person to set on fire any woods or prairie, except for the purpose of protecting property, and then only at such times as shall permit the person so setting the fire to extinguish the same.

SEC. 4. Whoever shall violate the provisions of the last preceding section shall for the first offense be fined the sum of \$5, and pay the full value of all property thereby destroyed; for the second offense, in addition to the penalty above described, the offender shall be confined in jail for the term of thirty-five days, and for the third offense the same punishment, except that the confinement in jail shall be for the period of three months.

SEC. 5. Any person living outside of the reserve cutting hay upon the land of one living on the reserve, shall pay to the owner of such land the sum of one dollar per acre, or one-half of the hay so cut.

SEC. 6. No person shall sell any wood on the reserve, except said wood be first cut and corded.

## ARTICLE III.

SECTION 1. Whoever shall find any lost article shall forthwith return the same to the owner, if he can be found, under the penalty imposed for stealing such article, for a neglect of such duty.

SEC. 2. Whoever shall take any article of property without permission of its owner shall pay the price of the article so taken, and receive such punishment as the judge in his discretion may impose.

## ARTICLE IV.

SECTION 1. Whoever shall take up any animal on the reserve as a stray shall, within one week, have the description of such animal recorded in the stray book kept by the council.

SEC. 2. If the owner of said stray shall claim the same within one year from the day on which the description was recorded, he shall be entitled to take it, after duly proving his property, and paying at the rate of five dollars per month for the keeping of such animal.

SEC. 3. The title to any stray, duly recorded, and not claimed within one year from the date of such record, shall rest absolutely in the person taking up and recording the same.

SEC. 4. Whoever shall take up a stray, and refuse or neglect to record a description of the same, as provided in section 1 of this article, shall be deemed to have stolen such animal, if the same be found in his possession, and shall suffer the penalties inflicted for stealing like animals. The stray shall be taken from him, and remain at the disposal of the council, and a description of the same shall be recorded in the stray book.

## ARTICLE V.

SECTION 1. If a person commit murder in the first degree, he shall, upon conviction, suffer the penalty of death; but if the evidence against him be insufficient, or if the killing be done in self-defense, the person doing the killing shall be released.

SEC. 2. Whoever shall, by violence, do bodily harm to the person of another shall be arrested, and suffer such punishment as may on trial be adjudged against him; and should death result from such bodily harm done to the person of another, the offender shall be arrested, and suffer such punishment as may be adjudged against him.

SEC. 3. Whoever shall wilfully slander an innocent party shall be punished for such slander at the discretion of the judge.

SEC. 4. Whoever, being intoxicated or under the influence of liquor, shall display at the house of another, in a dangerous or threatening manner, any deadly weapons, and refuse to desist therefrom, being commanded so to do, and put up such weapons, either by the owner of the house or by any other person, shall for the first offense be fined the sum of \$5, and pay all damages which may accrue; for the second offense shall be confined in jail twenty-one days and pay a fine of \$10 and pay all damages which may accrue, and for the third offense shall be imprisoned in the jail for thirty-five days, be fined \$20, and pay all damages as aforesaid.

SEC. 5. Officers shall be appointed to appraise all damages accruing under the last preceding section, who shall hear all the evidence, and render judgment according to the law and the evidence.

SEC. 6. Whoever shall, being under the influence of liquor, attend public worship or any other public meeting, shall first be commanded peaceably to depart, and if he refuses, it shall be the duty of the sheriff to arrest and confine such person until he becomes sober; and the offender shall pay a fine of \$5.

SEC. 7. It shall be the duty of the sheriff to attend all meetings for public worship.

SEC. 8. No member of the Delaware Nation shall be held liable for any debts contracted in the purchase of intoxicating liquors.

SEC. 9. The United States agent and the chiefs shall have power to grant license to bring merchandise to the national payment ground for sale to so many traders as they may think proper for the interest of the nation.

SEC. 10. It shall be unlawful for any one person to bring any kind of drinks, except coffee, on the payment ground; and any person who shall offend against this section shall forfeit his drinkables and his right to remain on the payment ground.

SEC. 11. It shall be unlawful for any one person to bring within the reserve more than 1 pint of spirituous liquors at any one time. For the first offense against this section the offender shall forfeit his liquors and pay a fine of \$5; for the second offense he shall forfeit his liquors and pay a fine of \$10, and for the third offense he shall forfeit his liquors and be fined the sum of \$25.

SEC. 12. Any person who shall find another in possession of more than 1 pint of liquor at one time upon the reserve may lawfully spill and destroy the same and shall use such force as may be necessary for such purpose. Should the owner resist and endeavor to commit bodily harm upon the person engaged in spilling or destroying said liquor, he shall be taken into custody by the sheriff and be punished as an offender against the law.

SEC. 13. The sheriff may lawfully compel any man or any number of men, ministers of the gospel excepted, to assist in capturing any person who shall violate these laws.

SEC. 14. Whoever shall offer resistance to any capture or arrest for violating any of the provisions of these laws shall be punished not only for the original offense for which he was arrested, but also for resisting an officer.

#### ARTICLE VI.

SECTION 1. All business affecting the general interest of the nation shall be transacted by the council in regular sessions.

SEC. 2. All personal acts of chiefs, councilors, or private individuals in such matters as affect the general interest of the nation shall be considered null and void.

SEC. 3. Whoever shall violate the last preceding section by undertaking in a private capacity and manner to transact public and national business shall be imprisoned in the national jail for a period not less than six months nor more than one year, and shall forfeit his place of office or position in the nation, which place or position shall be filled by the appointment of other suitable persons.

SEC. 4. Councilors shall be appointed who shall take an oath faithfully to perform their duties to the nation, and for neglect of such duties others shall be appointed to fill their places.

SEC. 5. Should a councilor go on a journey, so that it is impossible for him to attend the meetings of the council regularly, he may appoint a substitute who shall act for him in his absence.

SEC. 6. Certain days shall be set apart for council and court days.

SEC. 7. The chiefs and councilors shall appoint three sheriffs, at a salary of \$150 per annum each; one clerk, at \$100 per annum; and one jailor, at a salary of \$100 per annum, whose salary shall be due and payable half-yearly; and in case either of the above officers shall neglect or refuse to perform any of the duties of his office, he shall forfeit his salary, and his office shall be declared vacant and another shall be appointed to fill the office.

SEC. 8. The chiefs and councilors shall semiannually, in April and October, make an appropriation for national expenses, which appropriation shall be taken from the trust fund, or any other due the Delawares, and paid to the treasury.

SEC. 9. There shall be a treasurer appointed annually, on the 1st day of April, whose duty it shall be to receive and disburse all moneys to be used for national purposes; but the treasurer shall pay out money only on order of chiefs and councilors, and for his services shall be paid 5 per cent on the amount disbursed.

#### ARTICLE VII.

SECTION 1. It shall be lawful for any person, before his or her death, to make a will and thereby dispose of his or her property as he or she may desire.

SEC. 2. If a man dies leaving no will to show the disposal of his property and leaves a widow and children, one-fourth of his property shall be set aside for the payment of his debts. Should the property so set aside be insufficient to pay all his debts in full it shall be divided among his creditors pro rata, which pro rata payment shall be received by his creditors in full satisfaction of all claims and demands whatever.

SEC. 3. If the property so set apart for the payment of debts is more than sufficient to pay all debts the remainder shall be equally divided among the children.

SEC. 4. The widow shall be entitled to one-third of the property not set aside for the payment of debts.

SEC. 5. If a man dies leaving no widow or children, his debts shall first be paid out of the proceeds of his personal property, and the remainder, if any, with the real estate, shall be given to the nearest relative.

SEC. 6. Whoever shall take or receive any portion of the property belonging to the widow and orphans shall be punished as if he had stolen the property.

SEC. 7. The council shall appoint guardians for orphan children when they deem it expedient so to do.

## ARTICLE VIII.

SECTION 1. If a white man marry a member of the nation and accumulate property by such marriage, said property shall belong to his wife and children; nor shall he be allowed to remove any portion of such property beyond the limits of the reserve.

SEC. 2. Should such white man lose his wife, all the property shall belong to the children, and no subsequent wife shall claim any portion of such property.

SEC. 3. Should such white man die in the nation leaving no children, all his property shall belong to his wife, after paying his debts.

SEC. 4. Should such white man lose his wife and have no children, one-half of the personal property shall belong to him, and the other half shall belong to his wife's nearest relatives.

SEC. 5. Should such white man be expelled from the reserve and the wife choose to follow her husband, she shall forfeit all her right and interest in the reserve.

## ARTICLE IX.

SECTION 1. No member of the nation shall lease any grounds to persons not members of the nation.

SEC. 2. Should a white man seek employment of any member of the nation, he shall first give his name to the United States agent and furnish him with a certificate of good moral character, and also a statement of the time for which he is employed and the name of his employer.

SEC. 3. The employer shall pay all hired help according to agreement.

SEC. 4. Any person or persons violating any of the provisions of these laws on the reserve shall be punished as therein provided.

SEC. 5. All white men on the reserve disregarding these laws shall also be expelled from the reserve.

## ARTICLE X.

SECTION 1. Whoever shall forcibly compel any woman to commit adultery, or who shall commit a rape upon a woman, shall, for the first offense, be fined the sum of \$50 and be imprisoned in jail for thirty-five days; for the second offense he shall be fined \$100 and be confined three months in the national jail, and for the third offense he shall be punished as the court shall see proper.

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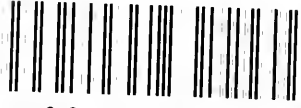
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